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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: AVL Books.Com, Inc.

File: B-295780

Date: March 28, 2005

Anesta Lenhardt for the protester.

Georgia Vlahos, Esq., Department of the Navy, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, participated in the preparation of the decision.

DIGEST

Protest challenging agency's oral amendment to solicitation is denied where oral notice adequately advised firms of agency's added requirement.

DECISION

AVL Books.Com, Inc. protests the evaluation of its quotation under request for quotations (RFQ) No. N00128-05-Q-0032, issued by the Naval Supply Systems Command for medical journal subscriptions. AVL Books asserts that online claims processing capability was improperly used as an evaluation criterion because AVL Books had not received proper notice that online claims processing was being added as a requirement to the RFQ.

We deny the protest.

On December 3, 2004, a presolicitation notice synthesizing this procurement appeared on the Federal Business Opportunities website. The RFQ requested quotations for annual subscriptions, starting January 1, 2005, for over 200 medical journals for the Naval Hospital's medical library. The RFQ did not list online claims processing capabilities as a requirement. The response date was December 14. The contracting officer received six quotations by the response date, including one from AVL Books. She rejected two of the quotations as nonresponsive; AVL Books' and three others were considered responsive.

According to the agency, the contracting officer contacted the medical librarian to inform her of the four responsive quotations, and the librarian asked the contracting officer whether those four respondents offered an online claims and tracking

service, whereby the librarian could track periodicals and claim credit against the subscription price for missing issues. Although online claims and tracking capability was considered important to meet the medical library's needs, the solicitation did not list this service as a requirement. Because time was short--the subscriptions were to begin in approximately 2 weeks--the contracting officer and the medical librarian called each of the respondents, except the incumbent, to ask whether they could provide this service. The incumbent was known to offer online claims processing.

Two of the three vendors who were telephoned reported that they did provide online claims processing, and those two followed up their telephone call with the contracting officer and the librarian with written confirmation of their ability to provide that service. AVL Books said that it provided claims processing by e-mail, telephone, and fax. Protest at 1. It did not issue any written follow-up to the telephone call.

On January 13, 2005, the contracting officer issued an order to Basch Subscriptions, which had submitted the lowest total subscription price of the three responsive offerors who were able to supply online claims processing. AVL Books protested to our Office on January 24.

AVL Books asserts that the telephone inquiry from the contracting officer and the librarian was not adequate notice that online claims processing services were being added as a requirement to the solicitation. AVL Books asserts that, as a result of the inadequate notice, AVL Books was deprived of the opportunity to compete on the amended solicitation.

It is a fundamental principle of government procurement that competition must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Systems Mgmt., Inc.; Qualimetrics, Inc., B-287032.3, B-287032.4, Apr. 16, 2001, 2001 CPD ¶ 85 at 8. When, either before or after receipt of proposals, the government changes or relaxes its requirements, it must issue an amendment to notify all offerors of the changed requirements and give them an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.206(a). If time is of the essence, however, the contracting officer may make an oral notice of the amendment. FAR § 15.206(f). While the contracting officer must then document the file and formalize the notice with an amendment, id., where the agency has adequately advised the offerors of its changed requirements, the failure to formally amend the solicitation is not significant. Ram Enters., Inc., B-221924, June 24, 1986, 86-1 CPD ¶ 581 at 3.

Here, although AVL Books asserts generally that the agency's telephone inquiry did not adequately communicate that online claims processing was an agency requirement, we find its assertion unpersuasive. As noted above, AVL Books was one of three firms that the contracting officer questioned about its online claims processing capabilities. Both of the other two firms understood the question to

mean that online claims processing capability was now an evaluation factor. Both firms, apparently of their own accord, followed up the telephone call from the contracting officer with a written confirmation to the contracting officer of their ability to provide that additional contract service. Under these circumstances, we conclude that the telephone call from the contracting officer and the medical librarian was adequate notice to all offerors that online claims processing capability had been added as a requirement to the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel