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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Computers Universal, Inc.

File: B-297552

Date: February 14, 2006

Peter L. Cannon for the protester.

Jonathan A. Beyer, Esq., Department of Defense, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency unreasonably evaluated protester's quotation for repairing a vehicle tracking system when it added to protester's price, for evaluation purposes, the protester's proposed increase in telecommunications charges under another contract for maintaining the system, without first verifying with the protester whether costs for necessary telecommunications to accomplish the purchase order work were already included in the purchase order price.

DECISION

Computers Universal, Inc. (CUI) protests the issuance of a purchase order to WINTEK IT, CO., LTD., by the Department of Defense Dependents Schools (DoDDS), pursuant to an oral solicitation, to reestablish operability of the Korea Vehicle Tracking System (KVTS). CUI contends that award was improperly made at a higher price than quoted by CUI.

We sustain the protest.

DoDDS is the overseas educational division of the Department of Defense Education Activity (DoDEA) that operates schools worldwide for students in United States military communities. The agency asserts that the safe transportation of these students to and from their schools is integral to DoDEA's mission. In this regard, the KVTS was designed to track the buses and students being transported to and from DoDDS throughout South Korea using global positioning system and digital telecommunications technologies. In order for the KVTS to function properly the system must be connected to an active telecommunications server. Agency Supplemental Report, Declaration of Logistics Division Chief.

CUI was awarded a contract to maintain the KVTS on August 26, 2005, for 1 base year with 2 option years beginning September 1. Shortly after CUI initiated performance of the contract, it discovered that the new Korea-wide cell phone standard of 11 digits required a change in the existing system's database program, given that the tracking devices in KVTS were programmed with cell phone numbers that were 10 digits long and the vehicle tracking database program would accept only 10 digit numbers.¹ Protester's Response to Agency Supplemental Report at 1. CUI informed the agency in an e-mail that it could perform the required changes to make the system operable, plus required testing, for \$20,000. Agency Report (AR), Tab D-2, E-mail from CUI to Contract Specialist (Sept. 6, 2005).²

In response, the agency instructed CUI to "not take any action as to the efforts you mentioned [which] would require the \$20,000" because this work was considered to be outside the scope of the maintenance contract. AR, Tab D-2, E-mail from Contract Specialist to CUI (Sept. 7, 2005). On September 8, the contract specialist sent CUI an e-mail requesting a plan from CUI for making the KVTS fully operational, in which the agency again stated that these changes were outside the scope of CUI's current contract. CUI's Response to Agency Supplemental Report, Tab 3, E-mail from Contract Specialist to CUI (Sept. 8, 2005). On that same day, CUI provided the Contract Specialist, in an e-mail, the list of the steps that it proposed to make the KVTS operational:

1. Deinstall of all MDT's [mobile data terminals] from the buses at each base.
2. The purchase of the new cell phone lines.
3. The programming of the MDT Cell phone modules with the new 010 numbers.
4. Permanent programming of the alias between the new 010 and 019 numbers.
5. Entry of the new 019 alias's in the DODDS Control Program.

¹ The KVTS system had apparently not been operable for some time prior to CUI's commencement of performance of the maintenance contract. See Protester's Comments on Agency Supplemental Report at 1.

² While the contracting officer states that the president of CUI stated in a telephone conversation with the contract specialist and the contracting officer that the total work to make the KVTS system operational was \$40,000 to \$50,000, this is denied by CUI, whose written quotations consistently indicate that it would perform the work for \$20,000.

6. Reinstallation of the MDT's into the buses.
7. Testing to insure all is working OK.

We can have all work completed 10 working days after approval of the additional \$20,000 required for the purchase of the new phone lines, [p]rogramming of the numbers into the MDT Cell Phone modules, and alias set up between the 010 and 019 numbers.

CUI's Response to Agency Supplemental Report, Tab 3, E-mail from CUI to Contract Specialist (Sept. 8, 2005).

On September 9, the contracting officer contacted CUI by telephone, and issued an oral request for quotations (RFQ) pursuant to the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) § 13.106-1(c), in which he requested that CUI provide a detailed quotation of what work and costs would be required to reestablish the operability of the KVTS. This oral RFQ was followed up by an e-mail in which CUI was instructed to include the “[p]roposed cost of the overall effort (note that this must be complete and factor whatever costs you feel will be necessary to reestablish operability).” Agency Supplemental Report, Tab H, E-mail from Contracting Officer to CUI (Sept. 9, 2005).

As requested, CUI again responded on September 9 with a quotation of \$20,000 as the total price to reestablish the operability of the KVTS system and listed essentially the same seven steps that it included in its September 8 e-mail to the contract specialist and provided milestones for accomplishing this work. In this same e-mail, CUI also requested an increase of \$7,000 per month in the telecommunications charges in its contract to maintain the KVTS because of incorrect historical information on which it based its maintenance contract price; this proposed incremental charge was labeled “Increase in Telecommunication Charges” on the price schedule. AR, Tab A-2, CUI's Quotation.

On September 9, WINTEK was telephonically requested to provide a detailed quotation of what work and costs would be required to reestablish the operability of the KVTS.³ This telephone call was also followed up by a confirming e-mail. In response, on September 14, WINTEK submitted a quotation of \$16,500 to reestablish the operability of the KVTS, plus a 1-month telecommunications charge of \$7,400, which WINTEK stated was “[b]ecause, in order to reestablish service, we need one month contract with [the telecommunications contractor],” for a total price of \$23,900. AR, Tab A-1, WINTEK's Quotation.

³ Only CUI and WINTEK were solicited for this RFQ due to the complex and expedited nature of the system repairs. Supplemental Contracting Officer's Statement at 2.

In evaluating CUI's quotation, the agency added to CUI's \$20,000 quotation an additional \$7,000 based upon CUI's request for a \$7,000 increase in monthly telecommunications charges under CUI's contract to maintain the KVTS (which, as noted above, was referenced in the same e-mail containing CUI's quotation to make the KVTS operable), to reach a total evaluated price of \$27,000. This was higher than WINTEK's \$23,900 quotation. WINTEK thus received the award as the vendor offering the lowest price.⁴ This protest followed.⁵

CUI contends that its \$20,000 quotation to make the KVTS operable was all-inclusive and included all necessary telecommunications charges, as evidenced by the fact that the quotation included the acquisition of new cell phone lines and testing (which could only be accomplished if there was an active telecommunications service). CUI states that its quotation clearly indicated that the requested \$7,000 increase in monthly telecommunications charges on its maintenance contract was completely separate from this work and that this charge would take effect after the system was made operable and the repair work was completed. CUI contends that it therefore provided the lowest-priced quotation and should have received the purchase order. We agree.

When using simplified acquisition procedures under FAR Part 13, an agency must conduct the procurement consistent with a concern for fair and equitable competition. In reviewing protests against an allegedly improper simplified award selection, we examine the record to determine whether the agency met this standard

⁴ This purchase order work has been completed. The agency now advises that it will no longer operate the KVTS and that the options in CUI's maintenance contract will not be exercised. See Agency Summary Dismissal Request for B-297693, Tab B, Declaration of Logistics Division Chief.

⁵ The agency argues that CUI's protest, filed on November 7, is untimely because it was filed more than 10 days after CUI was notified of the issuance of the purchase order to WINTEK. See 4 C.F.R. § 21.2(a)(2) (2005). In this regard, CUI was notified on September 15 that it was not the low vendor, although it was not advised of the award price. On multiple occasions, beginning September 22, CUI requested under the Freedom of Information Act (FOIA) that the agency provide certain information about the award, including the WINTEK purchase order. In response to its repeated FOIA requests, the agency informed CUI that "no contract exists for this requirement." Protester's Response to Agency Summary Dismissal Request (Nov. 16, 2005). After CUI appealed the denial of its FOIA request, on November 7, CUI was provided a copy of the purchase order to WINTEK, which for the first time indicated to CUI the purchase order price, and filed a protest that the award was not made to the low-priced vendor with our Office on that same day. Under the circumstances, we consider CUI's protest to be timely filed.

and exercised its discretion reasonably. Dew Drop Sprinklers & Landscaping, B-293963, July 15, 2004, 2004 CPD ¶ 171 at 3.

The agency claims that telecommunications services were necessary to test and demonstrate the operability of the KVTS, and that it added the \$7,000, which was taken from the same price schedule containing CUI's \$20,000 quotation to make the system operable, to account for these costs because "[t]he government also had to identify the cost of telecommunications within the CUI quotation in order to ensure [that] CUI had presented a viable proposal of reestablishing operability and testing of the KVTS," given that CUI's quotation did not specifically indicate that such costs were included. Contracting Officer's Supplemental Statement at 3.

CUI's claim that the costs for necessary telecommunications were included in its \$20,000 lump sum quotation is consistent with its e-mails and quotation, given that the quotation expressly included the acquisition of new cell phone lines and testing of the system, which could not be done without an active telecommunications service. In addition, CUI's quotation clearly indicated that the \$7,000 figure used by the agency in the evaluation was not the total monthly telecommunications charges, but was a proposed increase to the monthly communications charges under CUI's maintenance contract, and that this proposed increase was not related to CUI's quotation to make the system operable. Our review reveals no reasonable basis for the agency to assume that the \$7,000 increase referred to in CUI's quotation represented the cost of telecommunications that would be needed to make the system operable under the purchase order.⁶

In any case, the record evidences that the contracting officer did not ask CUI whether the costs for necessary telecommunications were included in its quotation or request CUI to separately price the telecommunications charges.⁷ Instead, when

⁶ The agency alternatively claims in its supplemental report that even if telecommunications were already being furnished under CUI's KVTS maintenance contract, CUI's quotation stated that the monthly charge for telecommunications should be \$7,000 more than provided under the maintenance contract and that it was therefore appropriate to account for these additional costs in the evaluation. We find no basis for the agency to apply this request to this evaluation, inasmuch as we do not believe the agency could reasonably assume that CUI's proposed change in the monthly telecommunications charge under the maintenance contract would (or could) be unilaterally imposed by CUI before this change was accepted by the agency and made applicable while the system was being repaired under the purchase order.

⁷ In its initial report, the agency claimed that it expressly requested that CUI provide a separate price for 1 month of telecommunications, although it provided no documentation supporting this claim, and the record indicates that telecommunications costs were unilaterally offered by WINTEK and were not

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its quotation was solicited, CUI was asked to provide “a detailed proposal of what work and costs would be required to reestablish KVTS operability,” and for a “[p]roposed cost for the overall effort,” to reestablish the operability of the KVTS. Contracting Officer’s Supplemental Statement at 2; Agency Supplemental Report, Tab H, E-mail from Contracting Officer to CUI (Sept. 9, 2006). Before adding this \$7,000 charge to CUI’s quotation for evaluation purposes, the agency, at a minimum, should have requested CUI to verify whether or not the costs for necessary telecommunications to accomplish the purchase order work were included in its \$20,000 quotation.

In sum, the agency unreasonably added CUI’s proposed \$7,000 increase in its telecommunications monthly charge in the KVTS maintenance contract to CUI’s \$20,000 quotation without first requesting that CUI verify whether the necessary telecommunications costs were already included in its quotation. On this record, CUI’s \$20,000 quotation was the lowest-priced one, and CUI should have been issued the purchase order, if otherwise appropriate.

Because we are advised by the agency that the performance under this purchase order has been completed, we recommend that CUI be reimbursed its quotation preparation costs as well as the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1), (2). CUI should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the agency within 60 days of receiving this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel

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solicited by the agency. CUI denies that any such request for separate pricing for telecommunications was made. Moreover, in response to CUI’s comments denying that any such request was made, the contracting officer, in the agency’s supplemental report, does not claim that CUI was specifically requested to provide a separate price for telecommunications.