

May 25, 2000

P.S. Protest No. 00-04

THE DATASTORE INCORPORATED

Solicitation No. 412735-00-A-0058

DIGEST

Protest of award of contract for local area network wiring is denied. Award to higher-priced offer was appropriate where protester's offer failed to address various technical requirements of the solicitation; because changes necessary to accommodate proposal to the requirement would be extensive and substantial, there was no requirement to discuss proposal deficiencies with offeror.

DECISION

The Datastore Incorporated protests its failure to receive award of a contract for the installation of a local area network (LAN) at the South Jersey District Office, Bellmawr, NJ.

The Purchasing and Materials Service Center, Philadelphia, PA, issued Solicitation 412735-00-A-0058 for the installation work on November 11, 1999. It called for a lump-sum price for the work, which was described in a two page "revised worksheet attachment number 9365."¹ The first page of the worksheet provided information about the items and quantities to be installed; the second page set out specific requirements in 12 numbered paragraphs. The worksheet accompanying the solicitation was dated 10/26/99. Amendment A01, 12/09/99, substituted a worksheet with further revisions dated 11/29/99. Both worksheets described various cabling components as "Cat-5E" and provided: "This cabling system will be a '5E system solution' having a minimum of a 15 year manufacture[r]'s warranty stating cable system will support Gigabyte Ethernet protocol technologies."

¹ 9365, is a form number, rather than a number unique to a specific wiring project.

Another attachment to the solicitation was the “United States Postal Service Standard Wiring Specification and Statement of Work, Revision 4a dated Feb 10, 1996.” Section 1.1 of that document makes reference to various other documents, including ANSI/EIA/TIA-568A, Commercial Building Wiring Standard, October, 1995, and TSB-67 Transmission Specifications for Unshielded Twisted Pair Cables, October, 1995.²

In addition, Amendment A01 included the following “testing statement”:

All testing of Enhanced Category 5 Cabling Systems must be in accordance with all test specifications for category 5 cabling plus TIA/EIA 568A-5 final draft, and TIA/EIA 95 specifications on “Additional Performance Specifications for 4-pair 100 ohm Enhanced Category 5 Cabling.”^[3]

The solicitation set out three evaluation factors: Price and other price-related factors, supplier-specific factors (past performance and supplier capability), and proposal specific factors (the supplier’s understanding of the requirement). The solicitation indicated that the supplier-specific and proposal specific factors, combined, were “as important as price and price related factors,” but it also stated that “[p]rice will be the determining factor in choosing among all offers which meet the minimum acceptable performance evaluation factors.” Offerors were to submit “[a] technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation.”

Paragraph 3.3, Instructions to Offerors – Commercial Items, provided at subparagraph f. as follows:

f. Contract Award. The Postal Service intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Postal Service reserves the right to conduct discussions if later determined by the contracting officer as necessary. The Postal Service may reject any or all offers if such action is in the best interest of the Postal Service, accept other than the lowest offer, and waive informalities and minor irregularities in offers received.

² A copy of the document furnished in the course of the protest gives the title as Transmission Performance Specifications for *Field Testing of Unshielded Twisted-Pair Cabling Systems*.

³ “TIA/EIA” stands for “Telecommunications Industry Association/Electronic Industries Association.” Its publication TSB95 is dated October, 1999. A document was provided in the course of the protest entitled “ANSI/TIA/EIA Standard SP-4436-B, Commercial Building Telecommunications Cabling Standard, Part 2: 100 Ohm Balanced Twisted-pair Cabling, Draft 5.0, December 12, 1999, To be published as: ANSI/TIA/EIA-568-B.2.” The forward to the draft states: “The Standard replaces, in part, ANSI/TIA/EIA-568-A, published October, 1995, and TIA TSB76, published October, 1995.” This apparently is the document which the amendment referred to as “TIA/EIA 568A-5 final draft” or (given its date subsequent to amendment’s date) a successor to the referenced document.

Four offers were received. Two of those offers, including Datastore's, were found to be technically unacceptable. Datastore's proposal had three major discrepancies: It had proposed "category 5 cabling," instead of the required "enhanced category 5 (5E) cabling," it had not provided a 15 year warranty for the cable system, and it had proposed that all seven furnished equipment racks would be wall mounted, although two wall-mounted racks and five floor-mounted racks had been specified. Datastore's proposal was also faulted for three minor discrepancies.

Without discussions, the contracting officer selected for award the offer of Tricomm Services Corp., the lower-priced of the two technically acceptable offers. Its price was \$210,035, some \$30,000 higher than Datastore's price. The contracting officer's memorandum justifying the award noted that Datastore's price would have been higher if it had proposed correctly, and that "to have returned the proposals for clarification and pricing would have delayed the project at least another month."

Datastore submitted a protest to the contracting officer, which noted the substantial difference in price, contending that "a phone call could or should have been placed to clarify our response." With respect to the specific discrepancies identified in its proposal, Datastore contended that Revision 4a of the wiring specification did not require testing to TSB 95, but rather required testing to TSB 67. With respect to the 15 year warranty, it contends that that requirement in the worksheet attachment was inconsistent with the requirement in Revision 4a, but that in any event, the standard warranty of the manufacturer whose items it had offered was 15 years. Concerning the racks, the protester contended that it offered the correct number of racks, but believed "that the actual type was to be defined once the project starts."

The contracting officer advised the protester that she was denying the protest and "[i]n accordance with the . . . Purchasing Manual, forwarding [the denial] for review by the General Counsel." Because the Purchasing Manual (PM) does not contemplate such review, we treat the protest as one which the contracting officer has referred to this office for resolution.⁴

The transmittal to this office included the contracting officer's statement responding to the protest and various documents relevant to the protest. The contracting officer's statement centered on the failure of Datastore's proposal to discuss testing the cabling in accordance with specification TSB 95 and TIA/EIA 568A-5 final draft. Instead,

⁴ PM 3.6 governs protests against the award of postal contracts. Under its procedures, contracting officers may deal with protests addressed to them either by (i) determining that they are meritorious (PM 3.6.6.c 1); (ii) determining, with the concurrence of (local) assigned counsel that they are obviously without merit (PM 3.6.6.c. 1.(b)); or (iii) referring the protest to the General Counsel for resolution in the same manner as a protest initially addressed to the General Counsel (PM 3.6.6.c 1.(a)). The PM contemplates that the General Counsel will become involved with a protest found without merit by a contracting officer only if the protester submits a subsequent protest to this office within five days of the contracting officer's adverse action. PM 3.6.4.e.

it characterizes the proposal as not even addressing the TSB 67 standard of revision 4a of the standard wiring specification, instead addressing the standards of an earlier version of that specification.

With respect to the warranty, the contracting officer contends that Datastore did not address the requirement for a 15 year manufacturer's warranty, not the requirement of a "system solution" which is said to require the use of trained and certified installation personnel. Concerning the racks, the contracting officer explains that wall racks would be unsatisfactory because existing cabling currently occupies the walls.

The protester submitted additional comments restating the price advantage of its offer, and contending that revision 4 of the standard wiring specification had been changed after its issue date without changing its revision number or date. The contracting officer was asked to respond to the protester's comments. She denied that the standard wiring specification had been changed since its revision date, asserting that any changes were reflected in worksheet 9365. She concludes that Datastore's proposal addressed requirement of Revision 2 of the standard wiring specification dated September 27, 1992.

DISCUSSION

The issue relevant to the protest is not whether the standard wiring specification included changes not reflected by its revision number or publication date, but whether Datastore's proposal was consistent with the solicitation's requirements and, if not, whether the contracting officer was obliged to enter into discussions to correct it.

Datastore's proposal contains considerable evidence that it was modeled on revision 2 of the standard wiring specification, not revision 4a as contained in the solicitation.⁵

⁵ For example, the section on page 4 of the proposal listing applicable documents tracks by title and date the documents listed in section 1.1 of revision 2, instead of the later editions of those documents listed in revision 4a. Other sections track revision 2 instead of revision 4a as well. See, e.g., under "Horizontal Cabling," the description of unshielded twisted pair cables meeting or exceeding the requirements of TSB-36 (revision 2) *vice* ANSI/TIA/EIA 568A (revision 4a). In addition, where revision 4a imposes requirements not extant in revision 2, Datastore's proposal fails to address them. See, e.g. under the heading "Cable Testing," the revision 4a requirement: "The contractor must provide signed and dated blanket certification encompassing the complete structured wiring system by the technician completing the tests." Revision 2 had no comparable provision, neither does Datastore's proposal.

The record provides nothing supporting Datastore's conjecture that the version of revision 4a included in this solicitation differed from any other version, but even if it had, the offeror was responsible for reviewing the solicitation documentation and assuring that its proposal responded adequately to it. "The offeror is responsible for any omissions or errors in its proposal." *Southern Air Transport*, P.S. Protest No. 89-56, October 3, 1989. "It is the offeror's responsibility to place before the contracting officer information necessary to permit evaluation of its proposal. No matter how capable an offeror may be, it runs the risk of losing the competition if its proposal does not include the informa-

(Footnote continued on next page.)

Further, the proposal did not respond to requirements contained in worksheet 9365 and in amendment A01 which transmitted the November 11 version of that worksheet. That is the case both with respect to the worksheet's requirements for a "15 year manufacture[r]'s warranty stating cabling system will support Gigabit Ethernet protocol technologies," and for the provision of two floor-mounted and five wall-mounted equipment racks, and the amendment's requirement that cable testing be pursuant to the TIA/EIA 568A final draft and TIA/EIA 95.

The protester's assertions that the worksheet's testing and warrant requirements differed from those of the standard wiring specification, that its manufacturer's warranty met the solicitation's requirements, and that it could resolve the issue of racks subsequent to award are not availing. The differences in the requirements were apparent on the face of the solicitation; if they presented a problem, they should have been the subject of a request for clarification before offers were due. In any event, Datastore's proposal did not offer to meet even the lesser testing requirement of revision 4a. While the proposal offered to provide "manufacturer warranty for equipment supplied or installed," in addition to Datastore's own one-year warranty, it provided no details about the nature or extent of that warranty. The worksheet clearly identified the quantities and styles of racks to be provided; there is no basis for the assertion that the matter could be deferred.

In the context of postal purchasing, "[d]iscussions include all communications held with suppliers during the purchasing process." PM 4.2.5.c 1. "Discussions need not be held with individual suppliers when, after evaluation and comparison of their proposals, it becomes apparent that their proposals do not offer the best value to the Postal Service and could not be improved to do so without extensive and substantial revision." PM 4.2.5.c 2.

The changes which would have to be made to Datastore's proposal to conform it to the requirements of revision 4a of the wiring specification clearly comprise "extensive and substantial revision[s]" within the context of the quoted regulation, and need not be accommodated by discussions.

The protester asserts that the Postal Service could and should have asked for answers to [the] questions [which arose concerning elements of the offeror's proposal]. However, the solicitation gave notice that award could be made on the basis of initial proposals received, without discussions. The burden was on the offerors to submit adequately written and complete proposals.

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tion necessary to evaluate this capability." *Fagan Construction Company*, P.S. Protest No. 91-31, July 31, 1991 (citation, footnote, and internal quotations omitted).

Gould Metal Specialties, Inc. P.S. Protest No. 94-51, February 8, 1995 (citations and internal quotations omitted).

The protest is denied.

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