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**Comptroller General
of the United States**

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

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Decision

Matter of: NCS Technologies, Inc.

File: B-403435

Date: November 8, 2010

Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for the protester.

Diane Foose, Esq., Department of Homeland Security, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirements that computers and monitors be from the same manufacturer and use Intel-based microprocessors is overly restrictive where the agency fails to demonstrate a reasonable basis for the requirements.

DECISION

NCS Technologies, Inc., of Gainesville, Virginia, protests the terms of request for quotations (RFQ) No. HSCETE-10-Q-00314, issued by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), for computer hardware. NCS challenges several solicitation provisions as unduly restrictive.

We sustain the protest.

BACKGROUND

The RFQ was issued to DHS's First Source contract holders and several small vendors on the General Services Administration's Federal Supply Schedule (FSS) 70,¹ and provided for establishing a blanket purchase agreement with a five-year

¹ DHS's First Source program consists of multiple, task order contracts for information technology commodities and supplies. Although the RFQ was provided to First Source contract holders, the blanket purchase agreement would only be issued to a vendor under its FSS 70 contract. RFQ at 56.

term for commercial off-the-shelf laptops, desktops, and monitors.² These items are being procured to replace ICE's existing computer equipment, at an anticipated rate of approximately 6,500 devices a year. RFQ, Statement of Work (SOW), at 4; Legal Memorandum at 2. The agency states that the estimated value of the blanket purchase agreement is approximately \$75 million. Legal Memorandum at 2.

The RFQ informed vendors that the blanket purchase agreement would be issued on a low-priced, technically acceptable basis and requested that vendors provide prices for estimated quantities of 8 different items: a high performance desktop computer, a standard performance desktop computer, a standard laptop computer, a lightweight laptop computer, a ruggedized laptop computer, a tablet computer, a 20-inch computer monitor, and a 24-inch computer monitor. RFP at 58-59. Among the requirements identified for the computers and monitors was that, with the exception of the ruggedized laptop, all of the computers and monitors must be from the same manufacturer.³ The RFQ also required that all of the computers use an Intel-based microprocessor. See RFQ, appendix B, client device specification. Vendors were also informed that they must submit with their quotations

a 3rd party review less than 2 years old such as that provided by 'Square Trade, PC Magazine, Byte, etc.' demonstrating that proposed manufacturer suite of equipment have been rated average or above in reliability as shown in the report provided. Internal reviews or white papers are not acceptable.

RFQ amend. 5, at 3.

Prior to issuing the RFQ, the agency conducted market research and determined that two firms [DELETED] could satisfy all of the stated technical requirements. See Agency Report (AR), Tab 6, Declaration of Information Technology Project Manager, at 1. The agency also determined that, based on its review of vendors' FSS contracts, two FSS vendors, [DELETED], could fulfill all the technical requirements.⁴

DISCUSSION

NCS objects to the requirement that all the computers and monitors (apart from the ruggedized laptops) be from the same manufacturer and that the computers use an

² The agency states that it considered the computers and monitors to be commercial items "because they are not unique and/or specialized." Legal Memorandum at 2.

³ The agency amended the RFQ to provide that the ruggedized laptop could be "from a different manufacture-brand." RFQ amend. 1, at 1.

⁴ NCS disputes this assessment, asserting that it cannot fulfill all the requirements.

Intel-based microprocessor. NCS contends that these requirements do not reflect legitimate agency needs and are unduly restrictive. NCS also objects to the requirement that vendors provide third party reviews establishing the reliability of the vendors' quoted products.⁵

Although a contracting agency has the discretion to determine its needs and the best method to accommodate them, the agency may include restrictive requirements only to the extent they are necessary to satisfy its legitimate needs. See FAR § 11.002(a)(ii); CHE Consulting, Inc., B-297534.4, May 17, 2006, 2006 CPD ¶ 84 at 2. We review challenges to allegedly restrictive requirements to determine whether the restrictions are reasonably necessary to meet the agency's needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3.

With respect to the requirement for a single manufacturer for the computers and monitors, the agency states that it has a legitimate need to standardize its information technology requirements. Legal Memorandum at 5. Specifically, the agency states that standardization will lower the agency's operational costs and will provide a common environment, generally seen as a best practice. Id. In addition to lower costs, the agency lists a number of other benefits, including: streamlining maintenance and parts support for the computers, simplifying field support, reducing deployment time and costs, providing a single point of contact for repair and support services, and obtaining predictable warranty response times. See Id. at 6; see also Contracting Officer's Statement at 3-4.

NCS disputes the agency's assertion that standardizing computers and monitors to one manufacturer results in lower costs or other tangible benefits to the agency. NCS points out, for example, that the solicited monitors are standard LCD monitors, which are built by numerous manufacturers to industry standards and which are interoperable with all computer brands. NCS asserts that this requirement achieves nothing more than administrative convenience for the agency. Protester's Comments at 2.

Here, we find that the record does not contain analyses or documentation supporting the agency's justification for its standardization requirement. That is, in support of this requirement, the agency has provided a statement from an information

⁵ NCS also initially protested a requirement that the vendors' quoted products have a "strong market presence" and the RFQ's failure to state whether the agency would evaluate the price of vendors' quoted optional equipment. The agency responded that it would amend the solicitation to state that FSS 70 vendors were deemed to possess a strong market presence, and to include Federal Acquisition Regulation (FAR) clause 52.217-3, Evaluation Exclusive of Options.

technology project manager, who generally asserts that standardizing the computers and monitors to a single manufacturer reduces costs and provides other benefits, such that a single manufacturer for all the computers and monitors is a legitimate need of the agency.⁶ See AR, Tab 6, Decl. of Information Technology Project Manager, at 1-2. The project manager does not, however, identify any analyses or studies that were performed to determine that this standardization requirement was necessary to obtain the asserted benefits; nor does the project manager provide any explanation or analyses that would show the extent to which these claimed benefits would be achieved by this restriction.⁷ In sum, the agency has provided nothing more than unsupported conclusions for its claim that the single manufacturer restriction is necessary. Without some documentation or explanation in the record to show that the restriction on competition will achieve the alleged benefits, we are unable to find that the agency's asserted justification for this restriction is reasonable.⁸ See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8 (it is a fundamental principle of government accountability that an agency be able to produce a sufficient record to allow for a meaningful review where its procurement actions are challenged); Navajo Nation Oil & Gas Co., B-261329, Sept. 14, 1995, 95-2 CPD ¶ 133 at 6-7 (agency's justification for restriction is not adequate where the justification consists of unsubstantiated factual assertions and conclusory statements).

NCS also challenges the requirement that all of the computers use Intel-based microprocessors. See RFQ, appendix B, client device specification. NCS contends

⁶ The agency also provides the declaration of another agency project manager who states generally that before establishing requirements "for a purchase of this nature" the project manager considers the needs and requirements of the user and that this was done here. See AR, Tab 11, Decl. of Project Manager, at 1. This statement also does not provide an explanation or analysis supporting the agency claimed need for a single manufacturer for all the computers and monitors.

⁷ The information technology project manager does state that, after his office created the draft specifications, market research was done for the purpose of determining whether there were manufacturers that could satisfy the agency's draft requirements. He does not state, however, that this market research was done to determine the agency's legitimate needs. AR, Tab 6, Decl. of Information Technology Project Manager, at 1.

⁸ The agency also argues that because ICE is a law enforcement agency this requirement concerns national security and is vital to the performance of the agency's mission. Given the absence of analysis as to what is actually required to meet the agency's needs, we have no basis to accept the agency's statement that the one manufacturer requirement is necessary for national security or law enforcement reasons.

that other microprocessors, such as Advanced Micro Devices (AMD) microprocessors, are of equal functionality and are “interoperable” with the same information technology systems for which the Intel processors are specified. Protest at 5.

ICE responds that the DHS has “not approved” the use of AMD equivalent microprocessors, and that AMD products are “not on the First Source Approved Hardware List.” ICE states that it does “not have authority to change [information technology] systems/components that have been approved by DHS.”⁹ Supp. AR at 5. The agency also contends that “AMD chipsets introduce increased security risks to ICE,” and that DHS/ICE security departments have found the risk unacceptable. *Id.*

As with the requirement for a single manufacturer, the agency has provided no analyses or studies, either from ICE or DHS, supporting its claimed need for Intel-based microprocessors. In this regard, the agency also does not explain the significance of a processor being included on the “First Source Approved Hardware List,” or how a vendor can have its microprocessor or other hardware device included on this list.¹⁰ Given our recommendation to consider whether the requirement for a single manufacture reflects the agency’s legitimate needs, we think the agency should also review its requirement for an Intel-based microprocessor.

Finally, NCS challenges the requirement that vendors provide third party reviews of their quoted computers and monitors to establish reliability of the equipment. NCS contends that this requirement is ambiguous, given that the requirement for “average or above in reliability” lacks specificity, and the phrase’s meaning may vary from one 3rd party reviewer to the next. Protester’s Supplemental Comments at 4. The agency responds that this requirement is not unduly restrictive, inasmuch as the agency does not specify particular third party reviewers that must be provided. The agency also contends that there is nothing ambiguous about stating that equipment must obtain an average or above rating in reliability. Supp. AR at 6.

While we do not view this issue as a separate basis for sustaining this protest, the agency may wish to reconsider this requirement. As the protester points out, the phrase “average or above in reliability” is unclear to the meaning of both “average or above” and “reliability,” as the meaning of these words vary depending upon the

⁹ The agency contends that NCS will not suffer any competitive prejudice from this requirement, because NCS offers computers on its FSS contract with Intel-based microprocessors. NCS responds that this requirement will prevent it from offering the bulk of its products.

¹⁰ As noted above, although the agency solicited First Source contract holders, issuance of the blanket purchase agreement was limited to vendors with a FSS 70 contract.

reviewer. In this regard, there is no objective standard specified to identify what the agency considers to be average reliability.

RECOMMENDATION

We recommend that the agency review its requirements for a single manufacturer and Intel-based microprocessors to determine whether these requirements reflect the agency's legitimate needs. To the extent that this analysis results in a change in the agency's determination of its needs, the agency should amend the RFQ and allow vendors, such as NCS, to submit quotations. We further recommend that the agency reimburse the protester the costs of filing pursuing its protest, including reasonable attorneys' fees. The protester's certified claim for costs, detailing the time expended and the costs incurred on this issue, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
Acting General Counsel