

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-209481**DATE:** June 6, 1983**MATTER OF:** Amray, Inc.**DIGEST:**

Where multiple award Federal Supply Schedule vendor submitted standard brochure in response to request for quotations and the brochure did not show that the equipment proposed met the technical requirements listed in the solicitation, the contracting agency acted reasonably in assuming that the firms equipment would not meet its needs.

Amray, Inc. protests the Department of Transportation's (DOT) issuance of delivery order No. DTNH22-82-F-01192 to Bausch and Lomb, Inc. for a scanning electron microscope (SEM) under the General Services Administration Federal Supply Schedule (FSS). We deny the protest.

Before placing the delivery order, the contracting officer issued a request for quotations (RFQ) to four vendors on the multiple award FSS based on the specifications in the attached statement of work. The statement of work listed 26 specific minimum technical requirements applicable to the SEM. Amray, along with its quotation, submitted its standard brochures describing the various SEM models it offered, without identifying any particular components or features Amray proposed to meet DOT's needs. Amray also furnished the domestic price list for each model.

The agency evaluated the four responses it received. Notwithstanding that Bausch and Lomb quoted the highest price, its SEM was found to be most advantageous to the Government because the equipment proposed by Bausch and Lomb possessed features which complied with 24 of the 26 technical requirements, and which were not all offered by the other firms. The agency, relying on the technical information in the brochure furnished by Amray, found that

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firm's SEM unacceptable and the least "responsive" because it appeared to lack a number of features that the agency considered necessary. For example, it appeared to DOT that the equipment offered by Amray did not include diagnostic capability and protection devices. Accordingly, an order was placed under Bausch and Lomb's FSS contract, and the equipment was delivered.

Amray complains of the purchase of an SEM at a higher price than offered by Amray. The protester asserts that its equipment in fact is equivalent to and provides the same features as Bausch and Lomb's equipment. Amray does not argue that DOT misread its technical literature but rather argues that DOT was obligated to give Amray an opportunity to satisfy any perceived informational deficiencies in its technical response before ordering from Bausch and Lomb since Amray was not aware that a detailed technical presentation was required. In this respect, the RFQ did not require any technical information to be submitted by the vendors, which suggests that a simple quotation would have been responsive to the agency's request.

The agency informally explains that since it sent Amray all 26 specification requirements, it assumed that the descriptive brochure Amray furnished to the Government contained the full technical capabilities of the equipment, so that no further communications with that firm were deemed necessary. DOT was therefore unaware that Amray offered features that were not addressed in its brochure, as alleged by Amray in the protest.

Purchases from the FSS are governed by the Federal Property Management Regulations, 41 C.F.R. Part 101-26.4 (1982), which require a Federal agency that procures from a multiple award FSS to do so at the lowest price consistent with its minimum needs. Once the procuring agency determines its minimum needs, it is required to procure from the lowest priced supplier on the schedule, unless it makes an appropriate justification for purchase from a higher priced supplier. Our Office will not take legal objection to a justification for purchase at other than the lowest price unless it is shown to be unreasonable. See Quest Electronics, B-193541, March 27, 1979, 79-1 CPD 205.

Here, the agency's evaluation of offers was based on the technical information supplied by the vendors in response to the RFQ. The agency then placed its order with the only vendor whose proposed equipment possessed features not provided by comparable items and which substantially complied with the technical requirements. Under such circumstances, a determination to purchase at prices other than the lowest delivered price available ordinarily is justified. See 41 C.F.R. § 101-26.408-3 (b)(1).

We agree with Amray to the extent that DOT could have obtained additional information about the equipment Amray was proposing before placing an order under the FSS for a higher priced SEM. Amray's equipment was not found to be noncompliant; rather, the agency simply found that certain of the statement of work's technical features were "not addressed" in Amray's brochure or were "unknown" after examination of the brochure. We believe that DOT properly could have assured itself during its evaluation that relevant information concerning the technical capabilities of the proposed equipment was available, accurate and complete.

Nonetheless, we do not agree that DOT legally was obliged to do so under these circumstances. We do not see how DOT, which supplied the vendors with a list of technical specifications, was supposed to know that Amray could have furnished a more complete quotation or responded to the RFQ with more detail than it did. One reason an RFQ is issued to multiple award FSS vendors, even though the equipment prices generally are fixed by the FSS, is to permit the vendors themselves to select and propose the appropriate FSS equipment and features, and all combinations thereof, to meet the agency's needs. See Dictaphone Corporation, 60 Comp. Gen. 260 (1981), 81-1 CPD 104. The ultimate offered price for meeting these needs includes the vendor's consideration of such things as any particular cost competition rules that may have been established for the purchase, necessary alterations to FSS equipment, and trade-in allowances offered. See Lanier Business Products, Inc., B-200695, B-200696, March 10, 1981, 81-1 CPD 188. We believe that a result of the nature of this process is that an agency, in evaluating quotations to insure that it will purchase the lowest priced equipment, is entitled to rely on a vendor's response as representing what that firm has to offer unless, of course, the agency

B-209481

independently knows otherwise. See, e.g., Dictaphone Corporation, supra.

The record shows that the agency in good faith assumed that the technical literature Amray submitted in response to the RFQ fully reflected the technical capabilities of Amray's equipment. If the agency was wrong, it was only because of the fact, as subsequently asserted by Amray, that the firm's submission in effect was incomplete. Under the circumstances, we believe the agency's assumption and reliance on it in evaluating Amray's quotation were reasonable, and we therefore will not object to DOT's conclusion that Amray's equipment was unsuitable. See Dictaphone Corporation; Business Equipment Center, Ltd., B-192314, B-192373, November 14, 1978, 78-2 CPD 345.

The protest is denied.

Nonetheless, by separate letter, we are suggesting that the General Services Administration consider issuing guidance concerning the acquisition of technical information so that all potential respondents to a multiple award FSS solicitation are aware of the response desired by the agency. We believe such guidance will insure that the vendors compete on an equal basis, and that the Federal agencies purchasing items from the multiple award FSS make fully informed determinations of the lowest priced equipment conforming to their minimum need.

for 
Comptroller General
of the United States