



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Great Journey West, LLC

File: B-407045

Date: September 21, 2012

Joseph P. McDonnell for the protester.
David G. Fagan, Esq., Department of Veterans Affairs, for the agency.
Jonathan M. Kucskar, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's issuance of an order under a brand name or equal procurement is denied, where the protester's quotation of an equal product failed to meet a salient characteristic of the solicitation.

DECISION

Great Journey West, LLC (GJW), of Spokane, Washington, protests the issuance of an order to Integrated Interiors International, Inc., of Los Angeles, California, under request for quotations (RFQ) No. VA-260-12-Q-1195, issued by the Department of Veterans Affairs (VA) for office chairs.

We deny the protest.

BACKGROUND

The RFQ, issued as a small business set-aside under Federal Acquisition Regulation (FAR) Subpart 8.4, sought quotations for 240 office chairs for the Memorial VA Medical Center in Walla Walla, Washington, on a brand name or equal basis. RFQ at 4, 10. The solicitation provided for the issuance of the task order to the vendor submitting the lowest-priced, technically acceptable quotation.

The solicitation identified Hon 3516 chairs as the brand name item and listed several salient characteristics for the chairs, including: "arms and sled base", dimensions of 28-1/4" width, 27" depth, and 35" height, and weight capacity of

350 lbs.¹ Id. at 4. In this regard, the RFQ incorporated the standard FAR brand name or equal clause, which requires quotations furnishing an “equal” product to satisfy all listed salient characteristics.² FAR § 52.211-6.

The VA received twenty-three quotations, seven of which, including GJW’s, were included in the competitive range. Contracting Officer’s Statement at 1. GJW, which submitted the lowest-priced quotation, offered an equal product, the Monterey 350 Guest Chair with Arms, model 334. Protest, exhib. 3, GJW Quotations, at 3. The descriptive literature provided with GJW’s quotation showed that the Monterey 350 chairs possess the following characteristics: sled base, dimensions of 24” width, 25” depth, 32.5” height, weight capacity of 350 lbs., and a 15-year warranty. Id.

The agency determined that the GJW’s Monterey chairs did not meet its requirements. Contracting Officer’s (CO) Statement at 1. Specifically, the agency’s end user selection team stated that the “[f]acility desires to standardize side chairs make/models with other buildings. Multiple chair types does not meet requirements.” Agency Report (AR), Tab 7, Email from Chief, Facilities Management Service, to CO, July 3, 2012.

VA issued a \$55,236 order to Integrated Interiors under that firm’s Federal Supply Schedule contract. AR, Tab 3, Order No. VA687-A20118. This protest followed.

DISCUSSION

GJW complains that VA improperly rejected its equal product for failing to meet a characteristic of the brand name that was not identified in the RFQ as a salient characteristic. Specifically, GJW states that the RFQ did not inform vendors that the equal chairs must match those already in use. Protest at 1. VA responds that GJW’s equal chair did not satisfy several specifications of the brand name item. CO’s Statement at 2.

Where, as here, a solicitation contains a brand name or equal purchase description, the FAR requires that it include "a general description of those salient physical, functional, or performance characteristics of the brand name item that an 'equal' item must meet to be acceptable for award. FAR § 11.104(b). The particular features of a brand name item set forth in a solicitation are presumed to be material and essential to the government's needs. Sourceling, LLC--Protest and Costs,

¹ The Hon 3516 chairs generally include a lifetime warranty, although this was not identified as a salient characteristic. RFQ at 4, 10.

² The RFQ also incorporated VA Acquisition Regulation brand name or equal clause 852.211-73, which requires equal products to satisfy all salient characteristics.

B-405907.2 et al., Jan. 27, 2012, 2012 CPD ¶ 58 at 3. With respect to a firm offering an equal product, the quotation must demonstrate that the product conforms to the salient characteristics listed in the solicitation. Nas/Corp-Telmah, Inc., B-405893, Jan. 10, 2012, 2012 CPD ¶ 88 at 2; OnSite Sterilization, LLC, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 2. If the firm fails to do so, its product is improperly rejected as technically unacceptable. Id. A procuring agency has a reasonable degree of discretion in determining whether a particular product has met the solicitation's technical requirements as set forth in the solicitation, and we will not disturb an agency's decision unless it is shown to be unreasonable. Beckman Coulter, Inc., B-405452, Nov. 4, 2011, 2011 CPD ¶ 231 at 5.

Here, it is true that VA informed GJW that its equal product was not acceptable because it did not match chairs already in use by the agency. The requirement to match existing chairs, however, was not identified in the RFQ as a salient physical, functional, or performance characteristic that equal products must meet. Only those brand name characteristics expressed in the solicitation can be considered in determining the acceptability of an equal quotation. See Research Technology International, B-243844, Aug. 19, 1991, 91-2 CPD ¶ 165 at 3.

Nevertheless, the record also shows that GJW's equal product was found not to satisfy a salient characteristic that was identified in the RFQ. Specifically, VA found that the RFQ identified the dimensions of the brand name chair (that is, 27" x 28-1/4" x 35") as a salient characteristic, and that GJW's equal chair was smaller in all dimensions (25" x 24" x 32.5"). In this regard, GJW concedes that its chair did not meet the solicitation's stated dimensional requirements.³ Comments at 1. Because the Monterey chairs did not meet the dimensional requirements specified in the RFQ, the agency reasonably found the quotation technically unacceptable. Mid-America Taping & Reeling, Inc., d/b/a Mid-America Government Supply, B-403381, Sept. 15, 2010, 2010 CPD ¶ 216 at 2.

The protest is denied.

Lynn H. Gibson
General Counsel

³ To the extent that GJW's contends in its comments that the dimensional requirements are unduly restrictive of competition, this concerns an alleged apparent solicitation impropriety that was required to be filed by the closing date for receipt of quotations. 4 C.F.R. § 21.2(a)(1) (2012).