



Comptroller General
of the United States
Washington, D.C. 20548

1415781

Decision

Matter of: New Brunswick Scientific Company, Inc.
File: B-246291
Date: February 3, 1992

DECISION

New Brunswick Scientific Company, Inc. protests amendment No. 0001 to request for quotations (RFQ) No. 369, issued by the National Animal Disease Center, Department of Agriculture, for one automatic bacteriological media sterilizer machine.¹

We dismiss the protest.

The RFQ was issued on August 30 as a small business, small purchase set-aside and requested quotations for the sterilizer machine based on eight technical requirements set forth in the RFQ's item description.² The agency received three quotations in response to the RFQ; the results were as follows:

Jouan, Inc.	\$ 7,650
New Brunswick	11,895
Matrix	12,100

On September 23, after receiving the technical evaluator's justification for purchasing the Matrix model, the contracting officer issued a purchase order to Matrix for the sterilizer machine.

On September 25, after contacting the contracting officer by telephone to determine the procurement results, New Brunswick learned that the Matrix machine was selected since it had a removable inner vessel--thereby allowing for the preparation and sterilization of more than one agar "batch"

¹This machine stirs and heat-sterilizes agar medias.

²On August 27, the contracting officer previously had contacted Matrix Technologies Corporation--the suggested source of supply--to determine whether the sterilizer machine was an "open market" item; at that time, Matrix gave the contracting officer an oral quotation for the sterilizer. On August 30, a written RFQ was distributed to six other potential vendors.

of medium at a time--and because the Matrix machine's equipment lid design provided easier and safer access for the user. Based on this information, during this same telephone conversation, New Brunswick objected to the purchase order award since these two features had not been set forth as technical requirements in the RFQ's item description.

After reviewing the RFQ, the contracting officer determined to take corrective action since due to an administrative oversight, these technical requirements were omitted from the solicitation. Accordingly, on September 26, the contracting officer issued amendment No. 0001 to all the previously solicited vendors which incorporated these two additional technical requirements into the RFQ. The new closing date for receipt of quotations was scheduled for September 30.

On September 27, New Brunswick filed an agency-level protest with the contracting officer challenging the amendment as improper corrective action. New Brunswick argued that the only permissible corrective action which the agency could take as a result of its administrative error was to cancel the award to Matrix and award the purchase order to New Brunswick as the low offeror under the prior, unamended RFQ. New Brunswick also notified the contracting officer that because the amendment was improper, New Brunswick would not submit a new or revised quotation as requested by the amendment.¹

By letter dated October 2, the contracting officer informed New Brunswick that a decision on its protest would be rendered October 28. The contracting officer also advised New Brunswick that the purchase order award to Matrix would not be canceled in the meantime. On October 15, apparently dissatisfied with the agency's October 28 deadline, New Brunswick filed this protest with our Office which reiterates its agency-level protest. As explained below, we find that New Brunswick fails to state a valid basis of protest.

Where, as here, an RFQ fails to set forth the agency's actual minimum needs, the RFQ should be amended and new quotes solicited to ensure that all firms are afforded an equal opportunity to compete based on the same set of

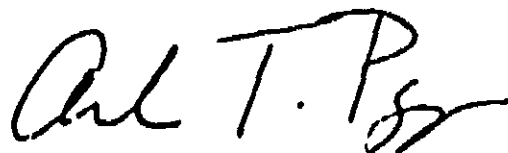
¹Jouan submitted a revised quotation on September 30; however, the Matrix machine equipment lid design was apparently determined to be technically preferable, and the purchase order award to Matrix was not canceled. The Matrix sterilizer machine was delivered to the agency on October 8.

requirements. See Armour of America, B-237690, Mar. 19, 1990, 90-1 CPD ¶ 304. In this regard, we have held that where award of a purchase order is based upon factors not set forth in the solicitation, such an award is improper unless the agency amends the solicitation and provides all vendors with the opportunity to compete on its actual requirements. See Ann Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142; Vocational Resources, Inc., B-242396, Apr. 29, 1991, 91-1 CPD ¶ 414.

In this case, after discovering that award was improperly based upon specifications inadvertently omitted from the RFQ, the agency amended the solicitation to incorporate the omitted technical requirements. Additionally, all vendors were advised of the amended requirements and given an opportunity to submit revised or new quotes, based upon the amended specifications. Although New Brunswick protests that this corrective action is improper, New Brunswick has provided no evidence to support this allegation. For example, New Brunswick does not challenge the amendment on the basis of its inability to meet the requirements or on the basis that the additional technical requirements exceed the agency's minimum technical needs. Beyond a bare allegation, New Brunswick has not demonstrated how this amendment prejudiced its firm or is otherwise improper. Accordingly, we find that New Brunswick fails to state a valid basis of protest.⁴ See Signal Corp., B-245376, Sept. 10, 1991, 91-2 CPD ¶ 238; Basic Supply Co., Inc., B-241683, Oct. 31, 1990, 90-2 CPD ¶ 362.

New Brunswick also contends that because the agency did not cancel the purchase order award to Matrix after issuing the amendment, the agency did not give vendors an equal opportunity to compete for award. However, a contracting officer need not cancel contract performance where an agency-level protest is received after award. See Federal Acquisition Regulation § 33.103(a)(4).

In light of the foregoing, we find that New Brunswick has failed to state a valid basis of protest and the protest is, therefore, dismissed. 4 C.F.R. § 21.3(m) (1991).



Andrew T. Pogan,
Acting Assistant General Counsel

⁴Moreover, although New Brunswick asserts that it should have received award as the lowest priced, acceptable quoter under the unamended RFQ, we note that the unamended RFQ simply did not reflect the agency's minimum needs.