

McArthur
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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Nova Biomedical
File: B-258715
Date: November 18, 1994

DECISION

Nova Biomedical protests the terms of solicitation No. M6Q-24-94, issued by the Department of Veterans Affairs for portable chemical analyzers and associated equipment, to be used as part of a mobile laboratory. The agency intends to purchase an equipment configuration that will allow for performing the most frequently ordered laboratory tests from a mobile cart, for patients in emergency ward and ambulatory care settings.


Each item of equipment in the mobile laboratory is being purchased through individual purchase item descriptions, which consist of brand name designations; the solicitation here is for an i-Stat Corporation chemical analyzer system, with associated equipment, and contains requirements for utilization, dimensions, and performance parameters. Although the solicitation appears to allow full and open competition subject to the "brand name or equal" limitation, the agency executed a justification and approval for the use of other than full and open competition as required by the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(f) (1988), citing the authority of 41 U.S.C. § 253(c) (1), which allows an agency to use other than competitive procedures when the property and services needed are available from only one responsible source and no other type of property or services will satisfy the agency's needs.

The Commerce Business Daily of August 9, 1994, contained the notice of the agency's intention to issue the solicitation and negotiate a contract with i-Stat but invited all responsible sources to identify their interest and capability to respond to the requirement by submitting proposals. The agency issued the solicitation on August 23 and provided a copy to the protester; on September 22, the protester filed a protest with the agency, arguing that in specifying the i-Stat analyzer, the solicitation was unduly restrictive of competition. On September 23, the agency

received proposals from the protester, which offered its own analyzer, and from i-Stat; this protest to our Office followed.

The record shows that apart from the protester's ability to meet the solicitation requirements,¹ Nova submitted a higher price than did i-Stat. Since Nova's protest is timely only insofar as it was filed with the agency prior to the date set for receipt of initial proposals, any allegation that the specifications should be relaxed further would be untimely, and there is no basis for finding that the protested restrictions prevented Nova from submitting a more favorable price than it did submit. Therefore, since even if we sustained the protest and the agency found Nova's offer technically acceptable, the protester would not be the low offeror and would not be in line for award, we need not decide the merits of Nova's challenge to the agency's stated requirements. See American Combustion, Inc., B-235397.2, Oct. 13, 1989, 89-2 CPD ¶ 348.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

¹The record shows that Nova's analyzer fails to meet dimensional, power, and sample volume requirements.