



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: ADM International, Inc.

File: B-405854

Date: January 6, 2012

John J. Bikus, ADM International, Inc., for the protester.
Gregory Harding, Esq., Department of the Air Force, for the agency.
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Under brand name or equal solicitation, protester's quotation was properly rejected where the protester failed to demonstrate that its product satisfied the salient characteristics and other requirements set forth in the solicitation.

DECISION

ADM International, Inc., of Chicago, Illinois, protests the issuance of an order to Shaw Industries, Inc., of Dalton, Georgia, by the Department of the Air Force, under request for quotations (RFQ) No. FA5205-11-Q-HN12, a brand name or equal procurement for carpet with backing and adhesive.

We deny the protest.

The Air Force issued the RFQ on August 3, 2011, to procure carpet with backing and adhesive for regular maintenance and repair of military family housing at Misawa Air Base, Japan. Seven vendors submitted quotations in response to the RFQ. Following an initial review on September 2, the Air Force determined that none of the quotations fully met the RFQ's information submission requirements. As a result, the Air Force decided to amend the RFQ to require vendors to submit manufacturer data verifying the features of their carpets, and to submit laboratory-issued, or manufacturer-signed, test certificates verifying various test results for the vendors' products.

On September 7, the Air Force issued the RFQ amendment to the seven original vendors. The amendment required vendors to submit revised quotations including: (1) verification of carpet, backing, and adhesive features; (2) sample carpet with

backing; (3) Material Safety Data Sheet for adhesive; and (4) test pass certificates for flammability, flooring radiant panel test, and electrostatic propensity. Agency Report (AR), Tab 7, at 4. The amendment advised as follows:

The specifications information shall be the manufacturer's issued catalog data or signed features, and each of the test pass shall be certified by the laboratory or signed by the manufacturer. [An] offer not meeting the solicitation requirement, or not providing any of the required information demonstrating conformance with the solicitation requirement, will not be considered for award.

Id. The amendment also reiterated that all three of the "listed test pass requirements are mandatory, and offered [items] with any failure to comply [with] the test pass requirement will not be considered for award." Id. at 10.

Six of the seven initial vendors, including ADM, submitted timely quotations in response to the amended RFQ. The Air Force completed its review of the revised quotations on September 19. As relevant, the Air Force determined that ADM did not submit required dimensional or density information for the carpeting and backing foam, a test pass certificate for flooring radiant panel, or a laboratory-certified or manufacturer-signed electrostatic propensity test pass certificate. AR, Tab 8, at 1-2. Accordingly, the Air Force concluded that ADM's quotation was ineligible for award. The Air Force issued the delivery order to Shaw on September 22. This protest followed.

ADM argues that its quotation was lower-priced than Shaw's quotation and should have been selected for the delivery order. However, ADM does not dispute that its revised quotation failed to include the information required by the RFQ. Instead, ADM argues that the required density information was included in its initial quotation and had not changed, that flooring radiant panel testing should not have been required because the brand name product did not carry a passing test certificate, and that its electrostatic test certificate was unsigned because the manufacturer "does not own the data generated by testing labs." Protest at 2. We conclude that the Air Force reasonably, and consistent with the terms of the solicitation, found AMD's quotation to be incomplete, and unacceptable.

When reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate quotations and substitute our judgment for that of the contracting activity. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations. Neopost USA Inc., B-404195, B-404195.2, Jan. 19, 2011, 2011 CPD ¶ 35 at 4; AlliedBarton Sec. Servs. LLC, B-299978 et al., Oct. 9, 2007, 2007 CPD ¶ 186 at 6.

Regarding the agency's evaluation of dimensional and density information provided by the protester, the RFQ required vendors to quote a product with "[t]otal carpet thickness including backing: Within 0.68 thru 0.75 [inches]." AR, Tab 7, at 5. The RFQ also required a carpet density of "[m]ore than 3,000 ozs/yd³," and a backing density of "18 lbs. per cubic foot." *Id.* In its revised quotation, ADM indicated that it would provide a carpet and backing with a total thickness of "MAXIMUM .75." *Id.* ADM did not indicate a minimum thickness, or a density for its offered carpet or backing. The agency concluded that ADM quotation did not demonstrate compliance with the RFQ's requirements, where it failed to specify a minimum thickness of at least .68 inches, and failed to provide density information.

As stated above, ADM argues that its revised quotation should not have been found unacceptable for failure to provide required information in its revised quotation because the missing information was provided in its initial quotation, and its offered product had not changed. We disagree. First, where an agency has amended an RFQ and solicited revised quotations, there is no basis for an agency to rely on information submitted in an initial quotation submitted in response to the initial RFQ to demonstrate compliance with the amended RFQ. Second, while ADM did submit a specific thickness measurement and carpet density information in its initial quotation, this information was not "the manufacturer's issued catalog data or signed features," as required by the amended RFQ.¹ In response to the amended RFQ, requiring verified data, ADM submitted only a maximum thickness dimension, and manufacturer's catalog data indicating average density as "N/A." Given ADM's failure to provide the required information in its revised quotation, we see nothing unreasonable in the agency's conclusion that ADM's quotation was unacceptable.

With regard to ADM's arguments that the flooring radiant panel and electrostatic propensity test certificates should not have been required, we find these arguments untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations be filed before that time. 4 C.F.R. § 21.2(a)(1) (2010). This rule includes challenges to alleged improprieties that do not exist in the initial solicitation but which are subsequently incorporated into it; in such cases, the solicitation must be protested not later than the next closing time for receipt of quotations following the incorporation. *Id.*; see *Cessna Aircraft Co.*, B-261953.5, Feb. 5, 1996, 96-1 CPD ¶ 132 at 16. Here, the requirement to submit these test certificates was clearly set forth in the amended RFQ, and the amended RFQ further cautioned offerors that "listed test pass requirements are mandatory, and offered [items] with any failure to comply

¹ We also note that while carpet density was stated in ADM's initial quotation, it is not apparent that ADM addressed backing density in any submission to the agency.

[with] the test pass requirement will not be considered for award.” AR, Tab 7, at 10. To the extent that ADM disagreed with these amended RFQ requirements, ADM was required to file its protest prior to the closing time of the amended RFQ.

The protest is denied.

Lynn H. Gibson
General Counsel