



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Mallinckrodt Inc.

File: B-282902

Date: September 10, 1999

Bruce Crowe, Esq., for the protester.
Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.
Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award was improper where solicitation overstated estimated quantity of one item by a factor of five, protester's bid was low based on quantity estimate in solicitation, and agency made award based on estimate corrected after bid opening.

DECISION

Mallinckrodt Inc. protests the award made to Nycomed Amersham for radio-pharmaceutical products under invitation for bids (IFB) No. 614-46-99, issued by the Department of Veterans Affairs Medical Center, Memphis, Tennessee. Mallinckrodt contends that the award to Amersham was improper.

We sustain the protest.

The IFB, issued on January 19, 1999, requested the submission of unit and total prices for an indefinite-quantity contract for a base year and two 1-year options.¹ The solicitation contained a quantity estimate for each line item. Three firms submitted bids. Agency Report, exh. 4, Abstract of Offers.

In reviewing the bids, the contracting officer noticed that on item No. 35, calling for "Ultratag RBC, 5 vial/kit 171 EA," Amersham's unit and total prices were

¹We note that the solicitation makes reference to past performance as an evaluation factor. Because the award decision was apparently based solely on price and the parties treat the solicitation as an invitation for bids, our decision follows the parties' practice.

substantially lower than those submitted by Mallinckrodt and the third bidder. For the base year, Amersham bid a unit price of \$42 and a total price of \$7,182. Mallinckrodt's unit and total prices for the base year were \$150 and \$25,650, respectively. Agency Report, exh. 3, Amersham's and Mallinckrodt's bids, at 10. As a result of this disparity, the contracting officer contacted the Radiology Service, which had requested the item be purchased, regarding this requirement. The Radiology Service confirmed that its estimated need was for 171 vials, not 171 kits. Agency Report, exh. 1, Contracting Officer's Statement. Apparently viewing the matter as a possible mistake in the bids, the contracting officer subsequently requested that each bidder clarify its bid by submitting a price per vial and a price per kit. As a result, the contracting officer determined that Mallinckrodt's prices and the third bidder's prices were based on supplying 171 kits with 5 vials per kit, for a total of 855 vials, while Amersham's prices were based upon supplying 171 vials.² Amersham, in fact, modified the bid schedule to read "171 (34 kt) vial." Using the price Mallinckrodt advised it would have submitted per vial for No. 35, which was \$30 (one fifth of its \$150 per-kit price), the contracting officer determined the total price the bidder would have submitted for the item and adjusted Mallinckrodt's bid. This calculation, which lowered Mallinckrodt's overall price to account for a reduction in the estimated quantity under item No. 35 from 855 to 171 vials, reduced that firm's original 3-year total price of \$589,552.42 to \$527,445.22. Amersham's total 3-year price of \$500,924.40 was unchanged, since the firm had priced based on the 171-vial estimate for No. 35 that the agency intended. Award was made to Amersham as the low bidder, and this protest followed.

Mallinckrodt argues that the IFB clearly called for 171 kits, rather than 171 vials, and that prices should have been evaluated accordingly. Mallinckrodt points out that, had bid prices been evaluated on the basis of 171 kits, Amersham's total evaluated price would have been higher than Mallinckrodt's total price. That is, if Amersham's per-vial price of \$42 is multiplied by 855 (171 kits of 5 vials each), its overall price would rise to \$591,212.40. Mallinckrodt concludes that the agency's reduction of its stated needs for item No. 35 in the IFB was improper, and that on the basis of the IFB terms, Mallinckrodt was the low bidder and should have received the award.

We believe that the IFB language, "5 vial/kit 171 EA," is unambiguous in calling for bidders to submit prices for an estimated 171 kits of 5 vials each, for a total estimated quantity of 855 vials. Where the IFB asked for prices per vials, it was equally clear. For instance, item Nos. 23 and 24 requested prices for a "Sodium Phosphate P32, 5mCi vial 12 EA" and "Chromic Phosphate P32, 15mCi vial 1 EA," respectively. IFB at 7-8. Item No. 35 does not request a price for a vial, but rather a "5 vial/kit." IFB at 10. As such, there was no mistake in the protester's bid; it correctly bid to the solicitation's 855-vial estimate and, if the total prices are calculated based on that quantity, the protester's bid is low.

²The third bid was rejected for reasons not relevant here.

Based on the agency report, however, we recognize that the solicitation substantially overstated the quantity of item No. 35 that the agency actually expects to order. We have no reason to doubt the agency's statement that it anticipates ordering approximately 171 vials, not 855 vials (171 kits). While Amersham, the incumbent, apparently detected the agency's error, its solution--altering the solicitation to reduce the quantity to 171 vials--did not correct the error for other vendors and the firm's unilateral action thus could not form the basis of award.³

We have long held that, where a solicitation's quantity estimates are found to be erroneous, it is generally improper for the contracting agency to reevaluate existing bids based on corrected estimates that are substantially different from those that formed the basis of the bidders' competition. See, e.g., Edward B. Friel, Inc., B-183381, Sept. 22, 1975, 75-2 CPD ¶ 164 at 10. Here, the error in the quantity estimate for item No. 35 is so large that there is no way to predict the impact that correcting it may have on the prices bid for that or other items being procured. Accordingly, instead of making an award in these circumstances, the agency should have resolicited the procurement on the basis of its best estimate of its actual requirements. While we recognize the potential adverse impact on the competitive bidding system of resoliciting after prices have been exposed, here a compelling reason for doing so exists, since the IFB substantially overstates the anticipated needs of the government. See Deere & Co., B-241413.2, Mar. 1, 1991, 91-1 CPD ¶ 231 at 2.

We recommend that the agency resolicit on the basis of its corrected requirements. If, as a result, an offeror other than Amersham is selected, we recommend that Amersham's contract be terminated. In addition, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1999). Mallinckrodt's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after its receipt of this decision.

The protest is sustained.

Comptroller General
of the United States

³We note, moreover, that Amersham's "correction" of the solicitation is problematic, since it refers to 34 kits, which would equal only 170 (not 171) vials.