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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: IVI Corp.

File: B-310766

Date: January 23, 2008

George J. Mackertich for the protester.

Col. Timothy J. Cothrel, Steven R. Fuscher, Esq., and Col. Neil S. Whiteman,
Department of the Air Force, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of this decision.

DIGEST

1. Under brand name or equal procurement, the contracting agency's determination regarding whether an offered product is acceptable will not be disturbed unless it is unreasonable.
 2. Offer of an "equal" product under brand name or equal solicitation was properly rejected where the technical information provided to the contracting agency failed to demonstrate that the "equal" product met all of the salient characteristics set forth in the solicitation.
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DECISION

IVI Corp. protests the award of a contract to Vacuum Precision Technologies under request for proposals (RFP) No. FA7000-07-R-0032, issued by the Department of the Air Force for a Multi-Layer Precision Optical Coating System. IVI argues that the agency failed to timely evaluate its proposal. The Air Force acknowledges that it temporarily lost IVI's proposal, but argues that it has now evaluated the proposal and reasonably determined that it is not technically acceptable. In response, IVI asserts that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The RFP was issued on June 11, 2007 as a brand name or equal solicitation including a detailed listing of salient characteristics. The RFP directed that proposals could be

emailed or faxed to the attention of the contract specialist, and to contact the contracting officer in the contract specialist's absence.

The agency received four proposals by the closing time of the solicitation. Two of the proposals were sent by email to the contract specialist, while the remaining two proposals, including IVI's, were sent by email to the contracting officer, despite the fact that the contract specialist was present on the closing date. Agency Report (AR), Tab 2, Contracting Officer's Statement of Facts, at 1. The contracting officer neglected to forward IVI's proposal to the contract specialist, though he did forward the other proposal he received. Id. The three proposals received by the contract specialist were sent to the customer for technical evaluation, and the customer determined that all three proposals that it reviewed were technically acceptable. Id. The award was made to the lowest-priced technically acceptable offeror, Vacuum Precision Technologies, on September 8.

IVI claims that it contacted the agency three times between the closing date of the solicitation and the date of the award, and that on each occasion it was informed that its proposal was under consideration. Protest, Tab 2, Telephone Log; Tab 3, Agency Protest, at 1-2. The agency has no record of this correspondence, however, both parties agree that IVI contacted the agency on October 10, to inquire as to the status of the solicitation, and was informed by the contracting officer that an award had been made on September 8, at a price higher than that of IVI's proposal. AR, Tab 2, Contracting Officer's Statement of Facts, at 2. During the October 10 conversation with IVI, the contracting officer was unable to locate IVI's proposal and stated to IVI that its proposal had not been received by the agency. Id.; Protest, Tab 3, Agency Protest, at 2.

IVI filed an agency-level protest of the award on October 15. In response to this protest the contracting officer conducted a search of the agency's records, which revealed that IVI had by email submitted a timely proposal of an "or equal" item. The contracting officer then immediately sent the proposal to the customer for technical evaluation. The technical evaluation concluded that IVI's proposal was not acceptable, and the agency was therefore in the process of denying IVI's agency-level protest when IVI filed its protest with our Office on November 7.

ANALYSIS

Although it is clear that the agency mishandled IVI's proposal in this case, this is not a "lost proposal" situation in which the missing information cannot be independently verified and meaningfully evaluated. See, e.g., Project Res., Inc., B-297968, Mar. 31, 2006, 2006 CPD ¶ 58; S.D.M. Supply, Inc., B-271492, June 26, 1996, 96-1 CPD ¶ 288 (lost proposal recovered after contract had been completed); East West Research, Inc., B-239565, Aug. 21, 1990, 90-2 CPD ¶ 147. Here, the "lost" proposal was discovered in the agency's possession, was known to have been timely received, was sent for a technical evaluation, and was determined to be technically unacceptable. In this context, while the agency's failure to timely forward the IVI proposal for

evaluation was unfortunate, we view the protest solely as a challenge to the reasonableness of the agency's technical evaluation. See, e.g., Basic Tech., Inc., B-214489, July 13, 1984, 84-2 CPD ¶ 45 (late evaluated proposal deemed technically unacceptable, protest decided as an evaluation challenge). This is because a reasonable determination that IVI's proposal is technically unacceptable would render IVI ineligible for the award regardless of the agency's other conduct in the procurement.

The agency asserts that its determination was reasonable because, while IVI's offer contained blanket statements that its "or equal" product would meet the salient characteristics in the RFP, the technical information it provided was incomplete and failed to support those blanket statements. IVI contends that its proposal provided an affirmative response to every characteristic listed in the RFP, and that the agency's after-the-fact determination is unsupported.

It is well-settled that it is the offeror's duty to include sufficiently detailed information in its proposal to establish that the equipment offered will meet the solicitation requirements, and that blanket statements of full compliance are insufficient to fulfill this duty. Aztek, B-229525, Mar. 2, 1988, 88-1 CPD ¶ 218 at 3. Likewise, merely restating the RFP's requirements is no better than a blanket offer of compliance. Id.

With respect to the offer of an "or equal" product, an offeror's proposal must demonstrate that its product conforms to the salient characteristics listed in the solicitation. See CAMSS Shelters, B-309784, B-309784.2, October 19, 2007, 2007 CPD ¶ 199 at 4. The contracting agency is responsible for evaluating the data submitted by the offeror and ascertaining if it provides sufficient information to determine if the offeror's product is acceptable. ACR Elec., Inc., B-266201, Jan. 24, 1996, 96-1 CPD ¶ 19 at 4. In making this determination, the agency enjoys a degree of discretion which we will not disturb unless we find that the determination is unreasonable. Id.

Here, we find that the agency's determination was reasonable. The record demonstrates that most of IVI's proposal was a mere restatement of the RFP's salient characteristics, without elaboration. Indeed, the record shows that the technical data accompanying IVI's proposal was limited to a 2-page product brochure that failed to address the majority of the more than 100 salient characteristics detailed by the RFP. In addition, some of the technical data provided in IVI's product brochure contradicted its proposal's claims that its product possessed the required salient characteristics. For example, the RFP specified as a salient characteristic that the optical coating system's coating chamber be 60 to 80 centimeters in diameter, and while IVI's proposal specified a coating chamber 80 centimeters in diameter, its

product brochure specified a coating chamber 36 inches, or 91.4 centimeters, in diameter.¹

In sum, as the offeror of an “or equal” item, the burden was on IVI to submit a proposal that adequately demonstrated that its offered product met the salient characteristics of the solicitation. As mere restatement of the RFP’s salient characteristics is insufficient to meet that burden, and IVI’s provided technical data was incomplete and contradicted its proposal, we cannot find unreasonable the agency’s determination that IVI’s proposal was not technically acceptable.

The protest is denied.

Gary L. Kepplinger
General Counsel

¹ In its comments, IVI acknowledges that it “was offering a slightly larger chamber” and claims that “[t]he larger size, by any optical technical standards, offers an advantage in product uniformity and flexibility of process.” Protester’s Comments at 1. IVI’s claim of a technical advantage is immaterial. When a solicitation sets forth particular features of a brand name item, they are presumed to be material and essential to the government’s needs. CAMSS Shelters, supra. Here, as noted, the agency specified an 80-centimeter maximum coating chamber diameter as a salient characteristic.