



## Decision

**Matter of:** PB Ventures, Inc.

**File:** B-402673

**Date:** June 17, 2010

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Joshua Kaye for the protester.

Joshua A. Kranzberg, Esq., Federal Bureau of Investigation, for the agency.

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

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### DIGEST

Protest challenging rejection of protester's quotation as unacceptable is denied where the quotation, submitted in response to a solicitation for scent transfer units on a brand name or equal basis, was properly found not to meet the solicitation's salient characteristics.

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### DECISION

PB Ventures, Inc., (PBV) of North Hollywood, California, protests the award of a contract to Big T, LLC, of Haw River, North Carolina, by the Department of Justice, Federal Bureau of Investigation (FBI), under request for quotations (RFQ) No. LDQ003077, for scent transfer units.

We deny the protest.

The RFQ was issued on March 11, 2010, for the purchase of 60 scent transfer units for the FBI's Laboratory Division. Scent transfer units are used to collect human scent evidence at a crime scene. The FBI Laboratory Division's Human Scent Evidence Team utilizes a scent transfer unit known as the STU-100, manufactured by Big T, LLC, as the primary means to collect scent evidence at crime scenes. The RFQ was issued as a "brand name or equal" requirement for STU-100 units. As required by Federal Acquisition Regulation (FAR) § 11.104(b), the RFQ set forth six technical features (or salient characteristics) that a product must have to qualify as an equal to the brand name product, as follows:

1. Internal Power Source
2. 12-volt vacuum
3. Teflon coated scent evidence pad holder
4. Teflon coated hood
5. Capable of being plugged into a 12-volt power outlet
6. Portable power source must be rechargeable

RFQ at 1-2.

PBV is a competing manufacturer that offers a product known as the Advanced Scent Transfer Unit (ASTU). On March 12, PBV contacted the contracting officer to express PBV's interest in responding to the RFQ and to explain that, although the ASTU has different specifications than the STU-100, both products collect trace human scent evidence through a vacuum collection process. PBV states that during this conversation, the contracting officer informed PBV that "he would accept our response to Solicitation LDQ003077 provided that we include detailed specifications to demonstrate how our product is an 'equal' item." Comments at 1.

PBV submitted its quotation in response to the RFQ on March 18. The quotation indicated that the ASTU was not an electrically-powered scent transfer unit, but instead required the use of an inert gas for operation. Agency Report, Tab 8, PBV Quotation, at 4. The agency rejected PBV's quotation as technically unacceptable, finding that the ASTU was not an electrically-powered unit as required by the RFQ. This protest followed.

PBV asserts that the agency erred in determining that the ASTU is not an "equal" product to the STU-100. Essentially, PBV argues that the ASTU and the STU-100 are both scent transfer units that utilize the principle of a vacuum to attract trace scent evidence, and that PBV provided the agency with ASTU specifications and analysis that demonstrated the equivalence of its product. PBV's argument is unpersuasive because it ignores the significance of the stated technical requirements in a brand name or equal procurement.

When a solicitation contains a brand name or equal purchase description, the FAR requires that it include "a general description of those salient physical, functional, or performance characteristics of the brand name item that an 'equal' item must meet to be acceptable for award." FAR § 11.104(b). The particular features of a brand name item set forth in a solicitation are presumed to be material and essential to the government's needs. Mid-Florida Corp., B-228372, Jan. 22, 1988, 88-1 CPD ¶ 60 at 4. With respect to a firm offering an equal product, the quotation must demonstrate that the product conforms to the salient characteristics listed in the solicitation. CAMSS Shelters, B-309784, B-309784.2, Oct. 19, 2007, 2007 CPD ¶ 199 at 4. If the quotation fails to do so, it is properly rejected as technically unacceptable. Id.

To be considered technically acceptable under the RFQ here, a quotation of an "or equal" item had to demonstrate not only that the offered product was a scent

transfer unit, but also that it had all the technical features set forth in the brand name or equal purchase description. Thus, without regard to whether the ASTU is equal, or even superior, to the STU-100 in the collection of trace human scent evidence, the fact that the ASTU does not conform to the stated technical requirement that the offered product be capable of being plugged into a 12-volt power outlet, among others, renders PBV's quotation technically unacceptable (and thus properly rejected by the agency).

PBV asserts that the technical requirements set forth in the solicitation were not relevant characteristics for determining whether a scent transfer unit is equal to the STU-100, and posits that the technical requirements resulted from unfair communications with Big T. First, there is no evidence in the record to demonstrate that Big T was in any way involved in the drafting of the technical requirements of this solicitation. Further, the fact that specifications are based upon a particular product is not improper, in and of itself; nor does an assertion that a specification was "written around" design features of a particular product provide a valid basis for protest if the record establishes that the specification is reasonably related to the agency's needs. G. H. Harlow Co., Inc., B-266049, Jan. 26, 1996, 96-1 CPD ¶ 95 at 2. Second, to the extent PBV now argues that the technical requirements are not material to the agency's needs, PBV presents a challenge to an alleged impropriety in the solicitation. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2010), require that protests of alleged solicitation improprieties apparent prior to the closing time of the solicitation be filed before that time. Because PBV's protest was not filed until after the closing time had passed and the award had been made, this basis of protest is untimely.

PBV also argues that the agency improperly waived the RFQ requirement that the awardee be registered in the Central Contractor Registration database, and conducted a flawed evaluation of Big T's past performance. We conclude that PBV is not an interested party to pursue these protest challenges. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for contract award if its protest were sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. Here, PBV would not be in line for award if its challenges to the agency's evaluation of Big T's quotation were sustained because, as discussed above, the agency properly found that PBV's quotation was technically unacceptable. Therefore, PBV is not an interested party to raise these issues.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel