



GAO

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: MediaNow, Inc.

File: B-405067

Date: June 28, 2011

Jon W. van Horne, Esq., Law Office of Jon W. van Horne, for the protester.
Megan L. Consedine, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Offer of “equal” products under brand name or equal solicitation was properly rejected where the technical information provided to the contracting agency failed to demonstrate that the “equal” products met all of the salient characteristics set forth in the solicitation.

DECISION

MediaNow, Inc., of Netcong, New Jersey, protests the award of a contract to World Wide Technology, Inc. (WWT), of St. Louis, Missouri, under request for quotations (RFQ) No. N00104-11-Q-Q441, issued by the Department of the Navy, Naval Inventory Control Point-Mechanicsburg, for digital signage solutions and hardware at Navy shipyards. MediaNow challenges the evaluation of quotations.

We deny the protest.

The RFQ contemplated the award of an indefinite-delivery/indefinite-quantity contract for 2 years, for a guaranteed minimum of \$400,000 and a maximum of \$2 million over the life of the contract. The RFQ specified the use of Cisco Systems, Inc. or “equal” products, including digital media manager and video on demand appliances, outdoor billboards, LCD monitors, speakers, media players, and associated maintenance, technical support, installation and training. Award was to be made to the vendor with the lowest-priced, technically acceptable quotation.

Three vendors including MediaNow and WWT submitted quotations. MediaNow initially submitted quotations offering two alternate “equal” product solutions. The evaluators found each solution had numerous deficiencies. In discussions, the

agency identified the deficiencies in MediaNow's solutions and provided it an opportunity to revise its quotation. MediaNow's final quotation offered VBrick products as a new "equal" solution. As with its prior solutions, the evaluators found that MediaNow's new solution indicated noncompliance with some requirements and failed to provide information demonstrating that its products met various other salient characteristics.

Although MediaNow's quotation offered the lowest price, its quotation was evaluated as technically unacceptable, and the contracting officer therefore awarded the contract to WWT as the vendor with the lowest-priced, technically acceptable quotation. After a debriefing, MediaNow challenged the evaluation of its quotation in a protest to the Navy. When that protest was denied, MediaNow filed this protest with our Office.

WWT'S Technical Acceptability

In its agency level protest, MediaNow asserted that, unlike its proposed VBrick products, WWT's brand name items were not certified under the Department of Defense Information Assurance Certification and Accreditation Process (DIACAP).¹ While MediaNow acknowledged that "this was not a requirement of this [RFQ]," it asserted that "this critical element would eventually have to be addressed." Agency Protest at 2. In its protest to our Office, MediaNow for the first time asserts that DIACAP certification was required (prior to award) by the RFQ's provisions concerning warranty of merchantability/fitness for a particular purpose, and compliance with applicable federal, state, and local laws, executive orders, rules, and regulations. Federal Acquisition Regulation § 52.212-4 (incorporated by reference in RFQ at 2). In this regard, MediaNow also argues for the first time that DIACAP certification was required by the provisions of Navy Instructions implementing federal statutes.

Our Bid Protest Regulations provide that where, as here, a protest has been initially filed with the contracting agency, we will consider a subsequent protest if the initial protest was timely filed. 4 C.F.R. 21.2(a)(3) (2010). Because our regulations do not provide for the unwarranted piecemeal presentation of protest issues, where a protester initially files a timely agency-level protest, and subsequently files a protest with our Office which includes additional grounds, the additional grounds must independently satisfy our timeliness requirements. Systems, Studies, and Simulation, Inc., B-295579, Mar. 28, 2005, 2005 CPD ¶ 78 at 7; Wilderness Mountain Catering, B-280767.2, Dec. 28, 1998, 99-1 CPD ¶ 4 at 5.

¹ As explained by MediaNow, DIACAP is the standard process under which all Department of Defense information systems achieve their authority to operate. Agency Protest at 2.

In our view, at the time MediaNow filed its agency-level protest asserting that DIACAP certification was ultimately required, it knew, or should have known its alternative bases of protest, i.e., that the RFQ's warranty and licensing provisions, as well as Navy instructions and federal statutes, required DIACAP certification prior to award. Thus, MediaNow's protest on these bases was required to be filed not later than 10 days after its debriefing. 4 C.F.R. § 21.2(a)(2). Since MediaNow did not raise these issues in its agency-level protest, its protest to our Office of these matters is untimely.

In any case, as acknowledged in MediaNow's agency-level protest, the RFQ did not require DIACAP certification prior to award; accordingly, the lack of any such requirement concerned an alleged solicitation impropriety. To the extent MediaNow believed that DIACAP certification should have been a condition for award, it was required to protest that matter prior to the closing time for receipt of quotations. 4 C.F.R. § 21.1(a)(1). Its failure to do so renders its protest in this regard untimely and not for consideration.²

MediaNow's Technical Acceptability

Vendors proposing "equal" items were required to "include a positive statement and supporting documentation confirming all salient feature[s]" listed in attachment A of the RFQ, had been achieved by the offered products. RFQ at 4. In evaluating MediaNow's final quotation, the agency found 23 instances where the vendor's products failed to meet the salient characteristics identified in the RFQ. MediaNow asserts that the agency miscalculated its proposal; according to the protester, its products meet or exceed all salient characteristics. Protest at 2.

In reviewing a protest of an agency's evaluation of proposals, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. It is the offeror's duty to include sufficiently detailed information in its proposal to establish that the equipment offered meets the solicitation requirements; blanket statements of compliance are insufficient to fulfill this duty. IVI Corp., B-310766, Jan. 23, 2008, 2008 CPD ¶ 21 at 3. Further, with respect to the offer of an "equal" product, an offeror's proposal must demonstrate that its product conforms to the salient characteristics listed in the

² In addition, MediaNow's contention that DIACAP compliance is required by an internal Navy instruction fails to state a valid basis of protest; our Office does not enforce internal agency instructions or directives. See Palm Beach Aviation, Inc., B-401450 et al., Aug. 28, 2009, 2009 CPD ¶ 177 at 3; RMS Indus., B-246082 et al., Jan. 22, 1992, 92-1 CPD ¶ 104 at 2.

solicitation. See CAMSS Shelters, B-309784, B-309784.2, Oct. 19, 2007, 2007 CPD ¶ 199 at 4.

In determining that MediaNow's quotation was unacceptable, the evaluators found at least 19 instances where the vendor failed to demonstrate that each of its equal items satisfied all of the salient characteristics. For example, the RFQ required the digital media manager appliance to remotely control and manage digital display properties such as on/off, contrast, brightness, and volume; to archive content/assign metadata to assets; and to offer a minimum of 6 gigabytes RAM. RFQ, attach. 1, Tab A. However, apart from general statements that its VBrick product could "meet" these requirements, MediaNow's quotation, including its attached product information sheets, provided no information that demonstrated these capabilities. Agency Evaluation of Tab A at 1. Indeed, even in its protest submissions MediaNow fails to identify where in its quotation the required information may be found. MediaNow Comments at 5. On this record, we conclude that the agency reasonably found that MediaNow's various blanket statements of compliance were inadequate to establish that its products met all salient characteristics.³ In these circumstances, MediaNow's quotation was properly found to be unacceptable.

The protest is denied.

Lynn H. Gibson
General Counsel

³ MediaNow argues that in four instances the agency unreasonably found that its products failed to meet specific requirements, even though its quotation showed that they met them. MediaNow Comments at 3-4. For example, it asserts that in evaluating its apparent failure to meet the native resolution requirement for 32" and 40" LCD displays, the agency failed to consider that both the VBrick and brand name displays achieved the specified resolution by use of outboard high-definition multimedia interface video cards. Id. As discussed above, however, the agency reasonably found MediaNow's quoted products were non-compliant with the salient characteristics in at least 19 other instances. Thus, regardless of whether the protester is correct, it was not competitively prejudiced by any alleged miscalculation in the four areas it challenges. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7 (prejudice is an essential element of every viable protest).