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United States Government Accountability Office
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Comptroller General
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Decision

Matter of: Nas/Corp-Telmah, Inc.

File: B-405893

Date: January 10, 2012

William L. Bruckner, Esq., Bruckner & Walker, LLP, for the protester.
Joshua Stevenson, Metro Medical Equipment & Supply, Inc., for the intervenor.
Kevin L. Pearson, Esq., Department of Veterans Affairs, for the agency.
Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated protester's quotation as unacceptable is denied where agency properly concluded that protester's quotation did not show that its microscope met the salient characteristics under the brand name or equal terms of the solicitation.

DECISION

Nas/Corp-Telmah, Inc. (NCTI), of Albuquerque, New Mexico, protests the award of a contract to Metro Medical Equipment & Supply, Inc., of St. Louis, Missouri, under request for quotations (RFQ) No. VA-246-11-RQ-0541, issued by the Department of Veterans Affairs (VA), for a surgical ophthalmic microscope for the VA Medical Center in Salisbury, North Carolina. NCTI protests the evaluation of its quotation and the selection of another vendor with a higher-priced quotation for award.

We deny the protest.

BACKGROUND

The solicitation, issued on September 6, 2011, specified that vendors were to provide a Zeiss OPMI Lumera 700 microscope and components, or equal product, and listed 10 salient characteristics that had to be satisfied by any product offered as equal to the brand name. RFQ at 1, 4. The salient characteristics required, among other things, that the microscope have stereo coaxial illumination to negate the use of Trypan Blue in certain situations; have a Xenon light source; have a

wireless foot pedal; and be upgradeable to future technologies to allow a surgeon to toggle between different views. Id. at 4.

The RFQ included the brand name or equal clause of the Federal Acquisition Regulation (FAR) § 52.211-6, which informs vendors that to be considered for award, quotations for equal products had to include sufficient information to show that the offered items met the salient characteristics listed in the solicitation.¹ RFQ at 22; FAR § 52.211-6. The RFQ specified that award would be made to the vendor that offered the lowest-priced quotation that conformed to the RFQ. RFQ at 23.

The VA received quotations from Metro Medical and NCTI by the RFQ's September 9 due date. Contracting Officer's Statement at 1. Metro Medical's quotation proffered the RFQ's brand name microscope (Zeiss OPMI Lumera 700) at a price of \$119,598.23. Supplemental Agency Report (AR), exh. F, Abstract of Quotations, at 19-21. NCTI's quotation proffered a [REDACTED] microscope, which NCTI's quotation indicated was equal to the brand name, for \$117,027.57. Supp. AR, exh. B, NCTI Quotation, at 4-7. NCTI included with its quotation a three-page document comparing the proffered microscope with the salient characteristics of the brand name identified in the RFQ. Id. at 37-39. As relevant to this protest, the document read:

SALIENT CHARACTERISTIC	[REDACTED]
Must have stereo coaxial illumination to negate the necessity for the use of Trypan Blue when operating on mature cataracts.	[REDACTED]
Must have Xenon Light Source.	Has [REDACTED] Light System. Xenon light source are available if demanded; however, [REDACTED] believes Xenon light is too intense and is the direct cause of burns during surgery.
Must have wireless foot pedal.	Does have foot pedal.
Must be upgradeable to future technologies.	The [REDACTED] is currently the most technologically advanced microscope using highly technical accessories

Id.

The agency reviewed NCTI's quotation and the accompanying comparison documentation and concluded that the [REDACTED] microscope offered by NCTI's

¹ The RFQ also included a similar brand name or equal VA acquisition regulation provision. RFQ at 10; See VAAR § 852.211-73.

was not equal to the Zeiss model identified in the RFQ. Supp. AR, exh. D, Evaluation Documentation, at 1-2. Specifically, the VA found that NCTI's quote did not address the use of Trypan Blue; did not include a Xenon light source unless "demanded" by the VA; did not indicate whether the foot pedal was wireless; and did not indicate whether the microscope was upgradeable to future technologies, particularly the ability to toggle between different images. Id. Consequently, the VA determined NCTI's microscope to be an unequal product, and the bid was rejected. Id. at 1; Contracting Officer's Statement at 2.

On September 28, the VA notified NCTI that award had been made to Metro Medical. Id. at 1. This protest followed.

DISCUSSION

NCTI protests the agency's rejection of its quotation as unacceptable. Specifically, NCTI objects to the VA's determination that the microscope submitted by NCTI failed to meet four of the salient characteristics of the brand name item identified in the RFQ. Comments at 2. NCTI argues that the award to Metro Medical was improper because NCTI submitted the lowest-priced quotation for a "clearly equivalent microscope." Protest at 2.

In reviewing protests of agency evaluations, we review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Ricoh America's Corp., B-402239, Feb. 22, 2010, 2010 CPD ¶ 55 at 2. Under a brand name or equal solicitation, a firm offering an equal product must demonstrate that the product conforms to the salient characteristics of the brand name product listed in the solicitation. OnSite Sterilization, LLC, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 2. If the firm fails to do so, its product is properly rejected as nonconforming. Id.

Here, the record shows that the agency reasonably determined NCTI's quotation to be unacceptable. In this regard, as noted above, the agency found that NCTI's quotation did not address all of the salient characteristics of the brand name microscope, as required by the RFQ. For example, the RFQ required any microscope offered as equal to the Zeiss model to include, as a salient characteristic, a wireless foot pedal. Regarding the characteristic, NCTI's quotation stated only that its microscope "[d]oes have foot pedal," but it did not indicate whether the foot pedal was wireless, as required. Supp. AR, exh. B, NCTI Quotation, at 37.

Similarly, another salient characteristic of the RFQ required that the equal microscope be upgradeable to future technologies, including the ability to toggle between diagnostic views saved prior to surgery and the real-time surgical view. RFQ at 4. The agency correctly noted that NCTI's quotation failed to indicate

whether its microscope was upgradeable to any future technologies, let alone the ability to toggle between different views. Supp. AR, exh. B, NCTI Quotation, at 37. NCTI's quotation merely stated that its microscope was the most technologically advanced and used highly technical accessories, none of which addressed the ability to upgrade or to toggle between views.

During the development of this protest, NCTI confirmed in an updated side-by-side comparison that the foot pedal is wireless and that its microscope was upgradeable to future technologies. See Protest, attach. D, Microscope Side-by-Side Comparison, at 1. In this comparison, NCTI also included additional information regarding other salient characteristics. Id. However, this information was not included in NCTI's quotation and, therefore, was properly not part of the agency's evaluation. See Supp. AR, exh. B, NCTI Quotation, at 37. Because NCTI's quotation did not address whether the offered [REDACTED] microscope met all of the RFQ's salient characteristics, the VA reasonably found the quotation unacceptable. We therefore find the award to Metro Medical, who submitted a technically acceptable quotation, unobjectionable.

The protest is denied.

Lynn H. Gibson
General Counsel