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Comptroller General
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Decision

Matter of: Nas/Corp-Telmah, Inc.

File: B-408136

Date: June 10, 2013

Branden L. Timboe, Esq., Bruckner Law Firm, for the protester.
Kevin L. Pearson, Esq., Department of Veterans Affairs, for the agency.
Christopher L. Krafchek, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly rejected the protester's proposal as unacceptable is denied where the agency reasonably concluded that the protester's proposal 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. (Metro Medical), of St. Louis, Missouri, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA 246-13-R-0669, for a surgical ophthalmic microscope for the VA Medical Center in Fayetteville, North Carolina. The protester argues that the agency unreasonably concluded that NCTI did not propose an equivalent product to the brand-name microscope sought under the RFP, and, as a result, improperly selected Metro Medical's higher-priced proposal for award.

We deny the protest.

BACKGROUND

The solicitation, issued on March 1, 2013, required offerors to provide a Zeiss OPMI Lumera 700 FL microscope and components, or equal product, and listed a series of salient characteristics that had to be satisfied by any product offered as equal to the Zeiss brand name product. RFP at 19. The salient characteristics required, as relevant here, that the microscope's light source provide stereo coaxial illumination (SCI) for red reflex illumination and field illumination, with both being adjustable. Id.

The solicitation included the brand name or equal clause at Federal Acquisition Regulation (FAR) § 52.211-6, which informs offerors that to be considered for award, proposals for equal products had to include sufficient information to show that the offered items met the salient characteristics listed in the solicitation. RFP at 20. The solicitation specified that award would be made to the offeror that offered the lowest-priced proposal that conformed to the terms of the RFP. Id. at 22.

The VA received proposals from Metro Medical, NCTI, and a third offeror by the solicitation's March 8 due date. Contracting Officer's Statement (COS) at 1. Metro Medical's proposal offered the required brand name microscope (Zeiss OPMI Lumera 700) at a price of \$189,937.74. Id. at 1. NCTI's proposal offered a Moller-Wedell HiR 900 (Moller) microscope, which NCTI's proposal indicated was equal to the brand name, for \$138,694.38. Id. NCTI's proposal included a two-page comparison of its offered microscope with the salient characteristics of the brand name identified in the solicitation, a one-page demonstration of the features of its offered microscope, and a four-page brochure. Agency Report (AR), exh. 6, NCTI's Proposal at 1-4; Agency's May, 30, 2013 email to GAO, attach. 1, NCTI's Brochure.

As relevant to this protest, NCTI's comparison indicated that the offered Moeller microscope did not provide the required SCI feature. AR, exh. 6, NCTI's Proposal at 2. NCTI's one-page demonstration of features indicated that the Moller product provides an "individual adjustable integrated red reflex enhancer," instead of SCI. Id. at 4. Finally, NCTI's brochure indicated that the Moller microscope provides "[s]trong red reflex." Agency's May 30, 2013, email to GAO, attach. 1, NCTI's Brochure at 3.

At the conclusion of its evaluation, the VA found that the Moller microscope offered by the protester was not equal to the Zeiss model identified in the solicitation. AR, exh. 7, Technical Evaluation at 2-3. Specifically, the VA found that NCTI's proposed microscope did not contain the required light source SCI for red reflex illumination and field illumination, and that its proposed single-mirror reflection was "considered old technology" and was inconsistent with the salient features called for in the solicitation. Id. at 2. Consequently, the VA concluded that NCTI's proposed microscope was not equal to the Zeiss brand product because "[t]he [Moller] Hi-r900 does not use SCI technology." Id. at 1. On March 21, 2013, the contracting officer informed NCTI that its proposal was rejected. AR, exh. 4, Notice to Unsuccessful Offeror at 2.

On March 22, NCTI responded to the VA's notice of non-selection and sought an explanation for the VA's determination. Id. at 2. In its inquiry, NCTI also confirmed that its offered microscope "do[es] not have SCI red reflex illumination," but advised that Moller prefers using a different form of red reflex illumination "for several reasons." Id. at 1. The VA responded to this inquiry and explained that the lack of

SCI red reflex illumination was the basis upon which NCTI's proposal was deemed unacceptable. Id. at 3. This protest followed.

DISCUSSION

NCTI protests the VA's rejection of its proposal as unacceptable. Specifically, the protester argues that the agency unreasonably found that the Moller microscope submitted by NCTI failed to meet the SCI salient characteristic of the Zeiss brand name item identified in the solicitation. Protest at 2. For this reason, NCTI contends that the award to Metro Medical was improper because NCTI submitted the lowest-priced proposal for a clearly "equivalent microscope." Id. NCTI also alleges that the agency failed to consider all of the information contained in its proposal because the four-page brochure was not included in the agency report filed with our office, and was not specifically referenced in the agency's evaluation documents. Protester's Comments at 2-3.

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 non-conforming. Id.

Here, the record shows that the agency reasonably found NCTI's proposal to be unacceptable. In this regard, as noted above, the agency concluded that NCTI's proposal did not offer a microscope that was equal to the Zeiss model concerning the salient characteristic of a light source SCI for red reflex illumination and field illumination. Regarding the characteristic, NCTI's proposal provided only the following explanation:

Moller prefers using the more advance[d]
individual/adjustable (IRRE) integrated red reflex
enhance as oppose[d] to SCI because it provides

- * Perfect Red Reflex in every eye
- * Excellent visualization of details
- * Bright red glow even at low illumination levels

AR, exh. 6, NCTI's Proposal at 2. Moreover, NCTI's features page simply reiterated the foregoing unsupported assertions of technical equivalence. Id. at 4. Finally, the brochure for NCTI's offered microscope only indicated that it provides "strong red reflex," and did not otherwise explain how the Moller microscope was equal to the Zeiss microscope with respect to the SCI light source requirement. Agency's May

30, email to GAO, attach. 1, NCTI's Brochure at 3. Thus, the record does not show that NCTI's proposal included sufficient information to demonstrate that its proposed equal microscope met the salient characteristics listed in the solicitation. Because NCTI's proposal failed to address whether the offered Moeller microscope met all of the salient characteristics in the solicitation, the VA reasonably found the proposal unacceptable.

Next, NCTI argues that the VA failed to evaluate its entire proposal because the VA did not include its product brochure in the agency report. Protester's Comments at 2-3. During the development of this protest, NCTI noted that the agency report failed to include NCTI's brochure which was provided in the protester's proposal. Id. Shortly thereafter, the agency confirmed receipt of the brochure with NCTI's proposal and provided a copy to our office. Agency Email to GAO, May 30, 2013. The record here does not support the protester's argument.

First, the contracting officer's statement, which was filed contemporaneously with the agency report specifically references NCTI's brochure. COS at 1. Second, the evaluation documents in the record reference technical information provided in the brochure, noting the size, degrees, and type of light enhancement offered in NCTI's proposed microscope. Compare AR, exh. 3, Agency's Buy Package at 2 with AR, exh. 6, NCTI's Proposal at 5-7. On this record, we find no merit to the protester's contention that the agency failed to consider the product brochure included in NCTI's proposal.

We therefore find unobjectionable the award to Metro Medical, given its technically acceptable proposal.

The protest is denied.

Susan A. Poling
General Counsel