



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Capture, LLC

File: B-409792

Date: June 16, 2014

James J. Mokhiber, for the protester.
Steven Cullen, Esq., Department of Defense, for the agency.
Kenneth Kilgour, Esq., Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the rejection of a quotation as unacceptable is denied where the quotation for an “or equal” product, submitted in response to a brand-name-or-equal solicitation for shredders, was properly found not to meet the solicitation’s salient characteristics.
2. Protest alleging that the awardee’s brand name product does not meet the salient characteristics in a brand-name-or-equal solicitation for shredders is dismissed as untimely; any alleged inconsistency between a brand name item and the salient characteristics used to define an “or equal” product must be protested prior to the closing time for receipt of quotations.

DECISION

Capture, LLC, of Tampa, Florida, protests the award of a contract to Resource Packaging, Inc., of Laguna Niguel, California, under request for quotations (RFQ) No. 862647, issued by the Department of Defense, Defense Threat Reduction Agency, for high security, combination paper and media shredders. Capture challenges the agency’s determination that its quoted shredder failed to meet the salient characteristics of the RFQ and argues that, in any case, the awardee’s shredder failed to meet certain salient characteristics.

We deny the protest.

The RFQ, issued via the General Services Administration’s (GSA) eBuy system to vendors holding GSA Federal Supply Schedule 75 contracts, sought quotations for three high security, combination paper and media shredders. The solicitation

required offerors to quote the Kobra Model 400 HS-6 Combi shredder or its equal, and listed the salient characteristics required of any “equal” product. RFQ at 1. Among the RFQ’s salient characteristics were an “Optical Media Capacity up to 2,550 disc per hour,” and a paper shredder speed of 30 feet per minute. Id.

The agency received quotations from several firms, including the awardee and the protester, with the awardee quoting the name-brand shredder and Capture quoting the Dynamo 662 DUAL shredder. Protest, Attchs. 1 & 7; Agency Motion to Dismiss (MTD) at 4. Attachments to Capture’s quotation identified the optical disk feed capacity of its shredder as 2,000 discs per hour. Protest, Attach. 3, Dynamo Specification Sheet; Attach. 4, NSA/CSS EPL¹ 04-02 Optical Media Destruction Devices; and Attach. 6, Shredder Comparison Chart at line 5. Attachment 6, an attachment to its quotation, elsewhere identified the disc capacity of the protester’s shredder as 2,750 discs per hour, but parenthetically disclaimed that figure with the notation: “This is a sales gimmick – Use NSA Info!” Protest, Attach. 6, Shredder Comparison Chart, at line 41. The protester’s quotation claimed a shredding speed of 28 feet per minute. Attach. 3, Dynamo Specification Sheet, at line 25; Attach. 6, Shredder Comparison Chart, at line 8.

The agency evaluated the protester’s quoted shredder as failing to meet the requirement of “Optical Media Capacity of up to 2,550 disc per hour,” because the protester’s specification sheet listed the capacity as up to 2,000 disc per hour. Protest, Attach. 11, Letter from Contracting Officer to Protester, Apr. 25, 2014. The agency therefore determined that the protester’s quoted shredder was not in compliance with the RFQ requirements.² Award was made to Resource Packaging, at a price higher than that offered by Capture, and this protest followed.

The protester asserts that the agency unreasonably found that its quoted shredder did not conform to the RFQ’s requirement for an optical media capacity of up to 2,550 discs per hour, when attachment 6, submitted with its quotation, lists the optical disc capacity of its shredder at 2,750 discs per hour. Protest at 2. The agency notes that the one reference to performance exceeding that requirement was emphatically disclaimed by the quotation itself. Agency MTD at 5.

In reviewing protests of an agency’s evaluation, our Office does not reevaluate quotations; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation’s evaluation scheme and procurement statutes and regulations, and adequately documented. Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 164 at 7. A protester’s disagreement with the agency’s

¹ National Security Agency/Central Security Service Evaluated Products List.

² The agency’s request for dismissal also asserts that the protester’s quoted shredder fails to meet the RFQ’s 30 feet per minute requirement. Agency MTD at 6.

judgments does not establish that the agency acted unreasonably. Encompass Group LLC, B-310940.3, Mar. 17, 2009, 2009 CPD ¶ 60 at 3.

Here, the record shows that the protester's quotation repeatedly stated that the optical media capacity of its shredder did not meet the solicitation requirement of 2,550 discs per hour. We agree with the agency that the one reference in Capture's quotation that the protester relies on--which states an optical capacity of 2,750 discs per hour, but then notes that this is simply a "sales gimmick"--does not provide a basis to object to the reasonableness of the agency's conclusion that the protester quoted a non-conforming product.

Capture also argues that the awardee's brand name product itself failed to meet certain salient characteristics included in the solicitation. This ground of protest is untimely. The purpose of a solicitation's statement of salient characteristics, as set out in Federal Acquisition Regulation § 11.104(b), is to define the minimum characteristics of the brand name product that an alternative equal product must meet. Thus, by definition, the salient characteristics should be derived from, and should reflect, the essential characteristics that, in the agency's view, the brand name product possesses. Accordingly, a contention that the solicitation-identified brand name item does not meet the salient characteristics is an argument that the solicitation is defective, because the solicitation represents that the brand name product possesses the salient characteristics listed, when, in the protester's view, it does not. CAMSS Shelters, B-309784, B-309784.2, Oct. 19, 2007, 2007 CPD ¶ 199 at 6. Any alleged inconsistency between a brand name item and the salient characteristics used to define an "or equal" product thus must be protested prior to the closing time for receipt of quotations, consistent with our standard rule for raising challenges to solicitation improprieties. Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1)(2014); CAMSS Shelters, supra, at 6-7.

The protest is denied.

Susan A. Poling
General Counsel