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Decision

Matter of: MEDI-e-ImageData Corporation

File: B-405164

Date: September 16, 2011

Kevin M. Long, Esq., Quarles & Brady, LLP, for the protester.
Stephani L. Abramson, National Archives and Records Administration, for the agency.
Gary R. Allen, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Placement of an order based on a quotation submitted in response to a request for quotations, issued on a “brand name or equal” basis, was improper, where the awardee’s “equal” product did not show compliance with a material solicitation requirement.

DECISION

MEDI/e-ImageData Corporation (MEDI), of Hartford, Wisconsin, protests the award of a contract to Micro Records Company (Micro), of Baltimore, Maryland, by the National Archives and Records Administration (NARA) under request for quotations No. NAMA-NW-11-Q-0009 (RFQ) issued to purchase integrated digital microfilm scanners with workstations for the Customer Services Division of the Access Program of NARA. The purpose of the RFQ was to allow NARA to upgrade the services it offers the research community at the Archives I facility in Washington, D.C. MEDI protests that the agency unreasonably determined that Micro’s quotation was technically acceptable.

We sustain the protest.

On March 23, 2011, NARA issued the RFQ as a fixed-price commercial item solicitation, seeking 12 digital microfilm scanners with 24-inch computer monitors, 2 black and white laser printers, and associated training system maintenance and support, for a base year with 4 option years. RFQ, attach. 1. The RFQ specified each

item by brand name, and stated that the requirement was for brand name or equal equipment. RFQ, attach 1.¹ Consistent with the use of a brand name or equal specification, the RFQ listed 18 salient characteristics for the scanner, which included a requirement that it have it have automatic film advance for frame-to-frame scan and save capability (section 2.1.16), and a requirement for a zoom lens 7x to 54x or higher (section 2.1.5). Id.

The RFQ provided that offerors quoting “equal” products were “required to submit itemized technical specifications for the scanner that addressed each enumerated requirement of the *Salient Characteristics*” set forth in attachment 3 of the RFQ. RFQ at 1; attach. 1 at 3, note 2. The RFQ also incorporated the provision at Federal Acquisition Regulation section 52.211-6, which informs offerors 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. The RFQ specified the award would be made to the vendor that offered the lowest-priced, technically-acceptable quotation. RFQ, attach. 4, § I.A. (a) and (c) at 5. The RFQ also required that products be delivered 21 days after order. RFQ, attach. 1 at 3, note 4.

On the due date of April 16, NARA had received quotations from four vendors, including Micro and MEDI. Micro offered items that it represented as equal to the brand name items specified in the RFQ, whereas MEDI offered the brand name items. The evaluator determined that only Micro and MEDI had submitted technically acceptable quotations. Micro’s quotation for allegedly equal equipment quoted a total price of \$[deleted], while MEDI’s quotation for brand name equipment quoted a total price of \$[deleted].

On May 3, NARA notified MEDI that award had been made to Micro because that firm provided the lowest-priced, technically acceptable quotation.² This protest followed.

MEDI protests the agency’s determination that Micro’s “equal” scanner satisfied the requirements of section 2.1.16 of Attachment 3 of the RFQ.³ In its quotation, Micro offered a [deleted], and addressed section 2.1.16 by stating that:

¹ The protest only concerns scanners and the brand name specified was e-Image Data Corporation ScanPro 2000 (Auto Scan). RFQ, attach. 3 at 2.

² The agency has stayed performance of the order.

³ MEDI also protests that it does not believe that Micro’s scanner complies with section 2.1.5. Micro’s quotation states that its proposed scanner “[c]omplies ” AR, Tab 3, Micro Quotation, attach. 3, § 2.1.5. Thus, we find no basis to sustain MEDI’s protest on this point.

AR, Tab 3, Micro's Quotation, attach. 3 at 2. In response to each of the other listed requirements (except one) Micro stated that its "equal" scanner complied with or exceeded the requirement. Id. at 1-2.⁴ With respect to section 2.1.16. Micro included a supplemental paragraph in its quotation, entitled . AR, Tab 3, Micro's Quotation, at 24.⁵

Under the circumstances, we think that the phrase in Micro's quotation indicated that the "equal" scanner that Micro proposed did not yet have the capability required by section 2.1.16. In addition, [deleted]

As mentioned above, the RFQ here required that products be delivered 21 days after order, and the order was placed on May 3, 2011.⁶ Based upon Micro's failure to offer a compliant product that could be delivered in the time frame set by the RFQ, we think NARA should have found Micro's quote to be technically unacceptable.⁷

We recommend that NARA review the quotations consistent with this decision, and either reject Micro's quotation as unacceptable and place the order with MEDI, or review the RFQ to ascertain whether the RFQ reflects NARA's actual requirements. If the agency determines that RFQ does not reflect its actual requirements, it should amend the RFQ, obtain revised quotations, conduct discussions as necessary, and place an order with the vendor whose proposal is determined to be best value under

⁴ For section 2.1.1, involving desirable dimensions for compact design, .AR, Tab 3, Micro Quotation, attach. 3 at 1.

⁵ In response to MEDI's agency-level protest, the CO asked the technical evaluator to "let [her] know how [Micro] meets the specifications that are listed on the solicitation at 2.1.16." The technical evaluator responded that Micro's supplemental paragraph referenced [deleted] . AR, Tab 11, Emails between CO and Technical Evaluator, May 16, 2011. Neither the technical evaluator nor the CO ever addressed the fact that Micro described its product [deleted].

⁶ A delivery schedule or time of performance set forth in a solicitation is a material requirement, precluding acceptance of any proposal not offering to meet that date. BOSS Constr., Inc., B-402143.2, Feb. 19, 2010, 2010 CPD ¶ 54 at 4.

⁷ An offeror is responsible for demonstrating that its proposal complies with all of the solicitation's mandatory requirements. Telemetrics, Inc.; Techniarts Eng'ing, B-242957, April 3, 1992, 92-2 CPD ¶ 168 at 4.

the RFQ. We also find that MEDI is entitled to the costs of pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1)(2011).

The protest is sustained.

Lynn H. Gibson
General Counsel