Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Elementar Americas, Inc.

File: B-282698

Date: July 16, 1999

Scott Hughes for the protester.
Thomas A. Darner, Esq., Environmental Protection Agency, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined protester's quotation was technically unacceptable where solicitation required submission of descriptive literature to establish that offered equipment met the performance specifications, and protester submitted only general technical information that did not show that all requirements were met.

DECISION

Elementar Americas, Inc. protests the issuance of a purchase order to Perkin Elmer under request for quotations (RFQ) No. OH-99-00114, issued by the Environmental Protection Agency (EPA) for an elemental analyzer system to be used at the agency's National Risk Management Research Laboratory in Cincinnati, Ohio. The protester contends that it quoted a lower price than Perkin Elmer and, therefore, that EPA should have issued the purchase order to Elementar.

We deny the protest.

A combined synopsis/solicitation using simplified acquisition procedures was posted on the electronic version of the Commerce Business Daily Internet web site on March 30, 1999, to obtain a commercial elemental analyzer system with related equipment including an autobalance, data storage device, and printer. Agency Report, Tab A; Legal Memorandum at 1. The RFQ identified 12 minimum performance specifications and requirements, and required vendors to provide descriptive literature in sufficient detail to demonstrate that the offered equipment meets those stated requirements. Id. at 2. At issue here is the performance

specification for "[o]ne (1) autobalance capable of measuring microgram quantities."[1] Id. at 1. The solicitation provided that a purchase order would be issued to the responsible vendor whose quotation was most advantageous to the government and listed two evaluation factors--technical capability of the items offered to meet the agency requirements, and price. Id. at 2.

Four quotations were received, ranging from Elementar's low quote of $40,547.49 to a high quote of $44,518.13. Agency Report, Tab E, Memorandum from Contract Specialist to The File (Apr. 28, 1999). Elementar identified a Sartorius M5P electronic autobalance as part of its proposed analyzer system but did not include descriptive literature for the Sartorius equipment. However, the protester's quotation stated that the Sartorius autobalance has readability to 0.002 mg (i.e., 2 micrograms). Agency Report, Tab B, Elementar Quotation, at 2. Perkin Elmer submitted the second low price of $40,682.72 for its Model 2400 Series II with an autobalance capable of weighing samples to a resolution of 0.001 mg. Agency Report, Tab C, Perkin Elmer Quotation.

The agency evaluator reviewed the technical portion of each quotation, and based on this review, he determined that the proposed Elementar autobalance with readability of 0.002 mg failed to meet the requirement for measuring microgram quantities to the level of 0.001 mg (i.e., 1 microgram). Agency Report, Tab D, Technical Evaluation of Elemental Analyzer Systems. The other three quotations proposed analyzer systems that were evaluated as meeting all the performance requirements in the solicitation. On April 29, the EPA issued the purchase order to Perkin Elmer on the basis that it submitted the lowest-priced, technically acceptable quotation. Elementar filed an agency-level protest on May 4, challenging the evaluation on various grounds that are repeated in this protest. The agency denied Elementar's protest on May 7, and this protest to our Office followed.

Elementar argues that the Sartorius autobalance it offered has a readability of 0.001 mg and thus satisfies the performance requirement at issue, and that the reference in its quotation to 0.002 mg was a typographical error. Protest at 1. The protester claims that Sartorius, "one of the world's leading manufacturers of microgram balances does not even produce one with the specification of 0.002 mg readability." Id. Nor is it aware, the protester states, of any manufacturer that makes this type of autobalance with readability of 0.002 mg. Id.

Simplified acquisition procedures are designed to, among other things, reduce administrative expenses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. Federal Acquisition Regulation (FAR) § 13.002. Even when using such procedures, however, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the

---

[1]A microgram is one thousandth of a milligram (mg). See Webster's Dictionary 750, 748 (9th ed. 1987).

solicitation. See Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3; Nunez & Assocs., B-258666, Feb. 10, 1995, 95-1 CPD ¶ 62 at 2. In reviewing protests against an allegedly improper simplified acquisition evaluation and selection decision, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Sawtooth Enters., Inc., supra. We have reviewed Elementar's quotation and the agency's evaluation and find that EPA reasonably determined that the protester's quotation was unacceptable.

As indicated, the RFQ contained minimum performance specifications and vendors were required to provide descriptive literature to establish that the offered equipment meets all the stated requirements. The protester's quotation's only explicit reference to the issue in dispute here indicated that it had readability only to 2 micrograms--i.e., it failed to meet the requirement.[2] The agency evaluated the technical information in Elementar's quotation and concluded that Elementar had not shown that the proposed Sartorius autobalance met the RFQ requirement for microgram readability. We see nothing unreasonable in this conclusion. Here, we think it was both reasonable and consistent with the combined synopsis/solicitation to select the firm which provided descriptive literature establishing compliance with the minimum performance specifications, rather than a firm whose submission did not establish compliance, or at best was ambiguous regarding compliance, with the specifications. West Coast Research Corp., B-281359, B 281359.2, Feb. 1, 1999, 99-1 CPD ¶ 27 at 3-4.

We also find without merit the contention that Elementar should be permitted to "correct" its quotation to demonstrate that the proposed Sartorius autobalance has readability to 1 microgram. The protester now, in essence, wants to submit the descriptive literature missing from its quotation to show that the proposed equipment does meet the specification requirement at issue here. We agree with the EPA that it was not required under the simplified acquisition procedures to permit the protester to revise its quotation.[3] FAR § 13.106-2(b); see Environmental Tectonics Corp., B 280573.2, Dec. 1, 1998, 98-2 CPD ¶ 140 at 4-5.

---

[2]Elementar states that it provided information in its quotation which shows a computer screen with the weights of typical samples, and that these weights have a readability of the requested 0.001 mg. The protester concedes, "[w]hile we admit it would take a very attentive analysis of our literature to see this, it does support the fact that our balances have readability of 0.001 mg." Protester's Comments at 1. We do not believe it would be reasonable to require agency personnel to find such obscure evidence, particularly when it was contradicted by the firm's clear statement that the equipment had readability only to 2 micrograms.

[3]Elementar also challenges the use of the phrase "microgram quantities" in the specification which, in its view, refers to quantities greater than one; as such, a 0.002 mg autobalance can measure "microgram quantities." Protest at 1. In any event, the protester states that if this specification was so important, "more specific

(continued...)

Finally, Elementar questions whether the phrase "autobalance capable of measuring microgram quantities" requires readability to 0.001 mg and contends that, if it does, the requirement is superfluous because a difference of +/- 0.001 mg cannot be detected using an analyzer system with a 0.5 percent detection limit. Protest at 1. This remaining argument is untimely and will not be considered since it relates to an alleged solicitation impropriety apparent prior to the April 15 due date for submission of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1999). As indicated above, it is clear that the protester understood the requirement at issue here was for an autobalance capable of measuring microgram quantities to 0.001 mg. In fact, the protester claims that its equipment met this specification; and contends that its quotation's reference to 0.002 mg was a typographical error. If it believed that the requirement was 'superfluous,' that is, exceeded the agency's needs, it was required to raise that basis of protest prior to the April 15 date. Id. In any event, the agency points out that the autobalance is a separate component of the analyzer system, and it will be used in other research applications requiring measurements at the microgram level.

Accordingly, the protest is denied.[4]

Comptroller General
of the United States

(...continued)
language" should have been used. Id. In its report on the protest, the agency explains that, when read in context, the phrase "microgram quantities" denotes quantities equal to or greater than 0.001 mg; in other words, the autobalance must have readability of 0.001 mg in order to measure a microgram. Contracting Officer's Statement at 2. Moreover, the agency notes that this interpretation was understood by the industry, as evidenced by the fact that the other three firms proposed autobalances that meet this readability requirement. Id. In our view, the protester's assertion that the readability requirement should have been more precisely stated need not be addressed since its quotation was properly rejected in any event because it failed to provide descriptive literature establishing the readability specifications for the Sartorius model. Further, we note that the protester's interpretation appears to be inconsistent with its arguments that it understood the specification required an autobalance with readability of 1 microgram, and that the reference to 0.002 mg in its quotation was simply a typographical error, and with its related argument that it knows of no manufacturer that makes an autobalance with 2 microgram readability.

[4]In its comments on the agency report, Elementar contends that the analyzer system offered by Perkin Elmer is not Year 2000 compliant, as allegedly required by the terms of the purchase order. Protester's Comments at 1. The protester's objection, however, concerns the administration of a purchase order issued to Perkin Elmer and is not for consideration by our Office. 4 C.F.R. § 21.5(a).