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Decision

Matter of: NABCO Systems, LLC

File: B-412261

Date: January 12, 2016

Jeffrey E. Weinstein, Esq., The Weinstein Law Group, PLLC, for the protester.
Department of State, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest against order placed under request for quotations, issued on a "brand name or equal" basis, is sustained where the awardee did not establish compliance of its "equal" product with all the salient characteristics of the agency's requirement.

DECISION

NABCO, Inc., of Canonsburg, Pennsylvania, protests the Department of State's issuance of a task order to Mistral Security, of Bethesda, Maryland, under request for quotations (RFQ) No. 1031783, for a multi-use explosive containment device. NABCO complains that the agency unreasonably determined that Mistral's quotation was technically acceptable.

We sustain the protest.

The agency issued the RFQ via the General Service Administration's e-Buy system pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, for the procurement of a total containment vessel for the transportation of improvised explosive devices and unexploded ordnance. RFQ at 1. The RFQ was issued on a "brand name or equal" basis, specifying the NABCO model 42-SCS container as the "brand name" and listing the salient characteristics with which an "equal" product would need to comply. Among the listed salient characteristics were four requirements for explosive ratings: 12.8 lbs. (5.8 kg) TNT repeated use; 10 lbs. (4.5 kg) military C-4 repeated use; 25.7 lbs. (11.7 kg) TNT one-time use; and 20 lbs. (9.1 kg) military C-4 one-time use. Id. The RFQ provided that vendors quoting "equal" products "shall submit descriptive literature to

demonstrate that the offer is equal to the stated brand name product.” Id. The RFQ provided that an order would be issued to the vendor that submitted the lowest-priced, technically acceptable quotation. Id. at 2.

Three vendors, including NABCO and Mistral, responded to the solicitation. Contracting Officer’s Statement (COS) at 2-3. NABCO submitted a quotation for the “brand name” item for **[DELETED]**, and Mistral submitted a quotation for a product it calls the Mistral ARC 6 GT, an “equal” item, for \$170,000. In its quotation, Mistral included descriptive literature--an “ARC 6 GT Product Data Sheet” and a Department of Defense Explosives Safety Board memorandum--which indicated an explosives rating of 13.23 lbs. (6 kg) TNT repeated use. Mistral Quotation at 2, 4-5. Mistral also provided an RFQ-specific compliance matrix, which included a checked box to indicate compliance with all four of the RFQ requirements for explosive ratings. Mistral Quotation at 4.

When government security personnel questioned whether the Mistral ARC 6 GT container would meet the agency’s needs, Mistral explained in a subsequent submission that the quoted container was different than the container with which the security personnel were familiar. In addition, Mistral furnished a table comparing the ARC 6 GT with the brand name product and indicating that the ARC 6 GT was compliant with three of the four requirements for explosive ratings. AR, Tab 6A, Mistral Response, Sept. 20, 2015, at 2. Mistral’s table, however, did not address the requirement for 20 lbs. (9.1 kg) military C-4 one-time use.

When the order was subsequently issued to Mistral for its Mistral ARC 6 GT “equal” container, Nabco filed this protest with our Office. NABCO asserts that the item quoted by Mistral is not equal to the “brand name” item because it does not meet the solicitation’s salient characteristics for 20 lbs. (9.1 kg) military C-4 one-time use and 25.7 lbs. (11.7 kg) TNT one-time use. In response, the agency asserts that the information provided by Mistral in its quotation and in response to the agency’s request for additional information demonstrated that the item quoted by Mistral meets the disputed salient characteristic.

As noted above, however, the solicitation required that vendors offering equal products “shall submit descriptive literature to demonstrate that the offer is equal to the stated brand name product.” RFQ at 1. Here, while Mistral included in its quotation descriptive literature with regard to 13.23 lbs. TNT repeated use, it only included a RFQ-specific compliance matrix which included a checked box to indicate that its offered “equal” item, the ARC 6 GT, met the other three requirements for explosive ratings--i.e., 10 lbs. (4.5 kg) C-4 repeated use, 20 lbs. (9.1 kg) military C-4 one-time use, and 25.7 lbs. (11.7 kg) TNT one-time use. Mistral Quotation at 4. It was only after the end user questioned whether the Mistral ARC 6 GT would meet its needs, that Mistral responded, on September 20, by submitting a table in which it referenced the name brand item and represented that

Mistral's ARC 6 GT had a rating of 30 lb. TNT one-time use. Mistral Response, Sept. 20, 2015, at 2.

Mistral's new table, however, did not address the requirement for 20 lbs. (9.1 kg) military C-4 one-time use. In an earlier, September 19 email to the contracting officer, in which Mistral addressed in detail the various concerns raised by government security personnel, Mistral asserted that the security personnel were operating under the mistaken belief that a 44 lbs. C-4 one-time rating was required when in fact only a 20 lbs. C-4 one-time rating was specified by the solicitation. That email also included Mistral's representation that "[t]he ARC 6 GT meets and exceeds all [of] the requirement criteria of the current solicitation." AR, Tab 6A, Mistral Response, Sept. 19, 2015.

The Federal Acquisition Regulation defines "descriptive literature" as: "information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction of a product or explains its operation." FAR § 2.101. At no time did Mistral satisfy the solicitation requirement that it submit descriptive literature establishing that its proposed "equal" product met the requirement for a 20 lbs. military C-4 one-time rating. While Mistral's quotation represented that its offered container met all of the specifications, such blanket statements of compliance or an offeror's belief that its products will meet the agency's needs are not sufficient where the solicitation requires the vendor to provide descriptive literature to demonstrate that its offered item complies with the specifications listed in the solicitation. See Sea Box, Inc., B-405711.2, Mar. 19, 2012, 2012 CPD ¶ 116 at 5.

We recommend that the agency conduct discussions with the vendors, permitting them to submit revised quotations, and then evaluate the revised quotations consistent with the discussion above and the terms of the RFQ. If at the conclusion of the corrective action Mistral's quotation is no longer the lowest-priced, technically acceptable quotation, the order issued to Mistral should be terminated. We also recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel