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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Beckman Coulter, Inc.

**File:** B-405452

**Date:** November 4, 2011

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Howard Stanislawski, Esq., Joel Singer, Esq., and Kyle J. Fiet, Esq., Sidley Austin LLP, for the protester.

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### **DIGEST**

In a procurement conducted under Federal Supply Schedule procedures, an agency reasonably found that a vendor's descriptive literature established that the vendor's quoted centrifuge satisfied requirements in a request for quotations for compatibility with the agency's existing centrifuge rotors and containment system design.

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### **DECISION**

Beckman Coulter, Inc., of Brea, California, protests the issuance of a delivery order to Thermo Fisher Scientific, Inc., of Asheville, North Carolina, under request for quotations (RFQ) No. 575218, issued by the Department of Health and Human Services (HHS), Food and Drug Administration (FDA), for a laboratory centrifuge.

We deny the protest.

### **BACKGROUND**

The RFQ, issued on June 17, 2011, on the General Service Administration's (GSA) e-Buy website, sought quotations from Federal Supply Schedule (FSS) vendors for the issuance of a delivery order for a programmable refrigerated ultracentrifuge for FDA's Center for Biologics Evaluation and Research (CBER), Division of Cellular

and Gene Therapies laboratory.<sup>1</sup> RFQ at 1; Contracting Officer's (CO) Statement at 3. The laboratory seeks to replace its outdated Beckman centrifuge, while continuing to use the laboratory's stock of Beckman model rotors. See Agency Report (AR), Tab 4, Requisition at 2; Tab 13, Laboratory Chief Email to CO, July 8, 2011.

The RFQ did not provide evaluation factors or identify the basis for issuance of an order and did not otherwise provide instructions for preparation of quotations. As relevant here, vendors were informed that the centrifuge must be compatible with Beckman centrifuge rotors (for example, Beckman rotor model No. SW32.1 Ti)<sup>2</sup> and that the centrifuge containment system must be designed to withstand the immense energy that can be released during a rotor mishap, among other things.<sup>3</sup> RFQ at 1.

The agency received quotations and product descriptive literature from Beckman and Thermo. See CO's Statement at 3. Beckman quoted a price of \$47,345 for its centrifuge model Optima L-90K. See id. at 1; Beckman's quotation at 5. Thermo quoted a price of \$30,225 for its centrifuge model Sorvall WX90. CO's Statement at 3; Thermo's quotation at 1-2.

The quotations and accompanying descriptive literature were evaluated by the CBER laboratory chief for whom the centrifuge was being purchased. See CO's Statement at 1-4. The laboratory chief expressed concern that, although Thermo's centrifuge "looks very good in most respects," it would not be compatible with the laboratory's existing Beckman rotors. See AR, Tab 11, Laboratory Chief's Email to CO, at 1. The laboratory chief informed the CO that the chief had been earlier informed by Beckman that using Beckman's rotors with non-Beckman centrifuges could be dangerous and would void Beckman's warranties on the rotors.<sup>4</sup> Id.

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<sup>1</sup> GSA's e-Buy system allows ordering activities to post requirements, obtain quotations, and issue orders electronically. Federal Acquisition Regulation (FAR) § 8.402(d).

<sup>2</sup> The rotor is a detachable unit that holds and spins samples within the centrifuge.

<sup>3</sup> The RFQ also states that the centrifuge must be capable of a speed of 90,000 revolutions per minute; be capable of zonal and continuous flow; have a temperature range of 0 to 40 degrees Celsius with a thermoelectric cooling system; and be no more than 37 inches wide. RFQ at 1.

<sup>4</sup> The agency states that, prior to the RFQ being issued, the laboratory chief had met with a Beckman sales representative at a trade show and discussed the laboratory's need for a new centrifuge. See CO's Statement at 1-2; AR, Tab 3, Emails between Laboratory Chief and Beckman, at 1-2. Beckman subsequently provided a quotation for its centrifuge model Optima L-90K to the laboratory chief, who forwarded it to the FDA's contracting office requesting that the agency purchase the Beckman

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Although Thermo's descriptive literature stated that the vendor's centrifuge was fully compatible with rotors from other manufactures, including Beckman, see Thermo's Quotation at 5, the CO asked Thermo whether its ultracentrifuge was compatible with the eight models of Beckman rotors currently used by the CBER laboratory. CO's Statement at 5; see AR, Tab 14, CO Email to Thermo, July 8, 2011. In response, Thermo submitted additional descriptive literature that states that Thermo's Sorvall WX centrifuge models are compatible with a broad array of other manufacturers' rotors, including the CBER's eight Beckman models, as well as 81 other rotor models. CO's Statement at 4-6; see AR, Tab 15, Thermo Scientific Centrifuge Innovations Brochure, at 1-3. The laboratory chief reviewed this information and informed the CO that "I'll definitely go with the Thermo centrifuge if we can resolve" whether Thermo, under its warranty, would pay for a replacement motor if one of the laboratory's Beckman rotors were to fail while being used in a Thermo centrifuge. See AR, Tab 16, Laboratory Chief Email to CO, July 13, 2011.

The CO asked Thermo to provide information regarding the vendor's warranty of the centrifuge when used with a Beckman rotor. CO's Statement at 5; AR, Tab 17, CO Email to Thermo, July 14, 2011. In response, Thermo provided a 54-page commercial brochure that included the vendor's warranty terms. Tab 19, Thermo Email to CO, July 14, 2011. These terms state that Thermo's warranty covered a Beckman rotor if it is used in a Thermo centrifuge and provide details in that regard for replacing or reimbursing the cost of the rotor and/or replacing or repairing the centrifuge.<sup>5</sup> See id., Tab 20, Thermo Scientific Centrifuge Solutions, 2007/2008 Ultracentrifuge Rotor & Accessory Guide, at 38-39. Thermo also informed the CO that HHS' National Institutes of Health (NIH) had been using Beckman and Thermo rotors in either manufacturers' respective centrifuges for years without any problems. Id., Tab 19, Thermo Email to CO, July 14, 2011. In this regard, Thermo also

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centrifuge on a sole source basis. Id.; see AR, Tab 4, Requisition, at 1-2. (Beckman later quoted the same price and centrifuge in response to the RFQ. See CO's Statement at 1-3.) The CO states that she requested a list of salient characteristics for the required centrifuge from the laboratory chief and, after reviewing GSA multiple award schedules, determined to competitively procure the centrifuge under FSS procedures. See CO's Statement at 2-3.

<sup>5</sup> This brochure also provided detailed specifications for Thermo's Sorvall WX centrifuge models, including their speed, capacity, temperature range, and dimensions, as well as a relative centrifugal field (RCF) chart, RCF formulas and calculations, detailed compatibility information, and certification marks for compliance with U.S., Canadian, and European Union standards. See AR, Tab 20, Thermo Scientific Centrifuge Solutions, 2007/2008 Ultracentrifuge Rotor & Accessory Guide, at 3, 41-53.

represented that NIH's Vaccine Research Center had been using Beckman rotors in Thermo's Sorvall WX model ultracentrifuges for over 10 years. See id.

The laboratory chief reviewed Thermo's additional technical literature and warranty terms. See id., Tab 21, Laboratory Chief Email to CO, July 14, 2011; CO's Statement at 5-6. He concluded that Thermo's WX90 centrifuge was "satisfactory," stating that "it is certainly going to save us a lot of money[.]" and asked the CO to proceed with issuing the delivery order to Thermo.<sup>6</sup> AR, Tab 21, Laboratory Chief Email to CO, July 14, 2011.

The CO decided to issue the delivery order to Thermo, because it had submitted the lowest-priced, technically acceptable centrifuge. See FDA Email to GAO, Oct. 4, 2011, attach., Purchase Order Documentation, Recommendation for Award/Documentation of Price Reasonableness, at 1; CO's Statement at 6. On July 7, the agency issued the delivery order to Thermo, and this protest followed. CO's Statement at 6; AR, Tab 23, Purchase Order.

## DISCUSSION

Beckman objects that Thermo's centrifuge does not satisfy the RFQ's compatibility and containment requirements. See Protest at 4-5. In this regard, Beckman complains that the agency accepted, without verification, Thermo's representations on their face that the firm's centrifuge would be compatible with Beckman's rotors. See Comments at 5-13, 23. The protester asserts that Thermo's centrifuge is not compatible with Beckman rotors because its rotors are unique to its own centrifuges and are not interchangeable. Protest at 4-5. Beckman also complains that the agency improperly relied on Thermo's warranty "as proof" that its centrifuge complied with the terms of the RFQ.<sup>7</sup> Comments at 21. In this respect, Beckman maintains that the agency ignored significant countervailing evidence regarding the compatibility and safety of Thermo's centrifuge and cites the initial concerns in that regard. Id. at 6-11, citing, inter alia, Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 9 (an agency may not accept representations in a proposal at face value where there is significant countervailing evidence reasonably known to

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<sup>6</sup> The CO states that she did not ask the laboratory chief to evaluate Beckman's quotation because he had earlier requested that the agency purchase the Beckman centrifuge on a sole source basis and because he had developed the RFQ's salient characteristics for the required centrifuge based on Beckman rotor specifications. See CO's Statement at 4; supra n.4.

<sup>7</sup> Beckman also disputes the enforceability of Thermo's warranty, arguing that it would be voided by operation of Beckman's own warranty, which states that use of Beckman rotors in another manufacturer's centrifuge voids the Beckman warranty. See Comments at 19-22.

the agency evaluators that should or did create doubt as to whether the representations are accurate).

FDA asserts that it reasonably determined that Thermo's centrifuge met the RFQ's terms and that it offered the best value over Beckman's substantially higher priced centrifuge. AR at 4. The agency maintains that it properly relied on Thermo's commercial literature, standard warranty terms, and representations about NIH's experience. See id. at 5, citing Electronic Vision Access Solutions, B-401473, Aug. 25, 2009, 2009 CPD ¶ 169 at 4-5.

A contracting agency has the primary responsibility for determining its legitimate needs and for determining whether an offered item will satisfy those needs, since it is the agency that is most familiar with the conditions under which the supplies or services will be used and that must bear the burden of difficulties incurred by reason of a defective evaluation. Berkshire Computer Prods., B-246305, Feb. 28, 1992, 92-1 CPD ¶ 242 at 2. In this regard, a procuring agency enjoys a reasonable degree of discretion in determining whether a particular product meets the solicitation's technical requirement as set forth in the salient characteristics and we will not disturb the agency's determination unless it is shown to be unreasonable. Koehring Cranes & Excavators; Komatsu Dresser Co., B-245731.2, B-245731.3, Nov. 23, 1992, 92-2 CPD ¶ 362 at 4. Thus, in reviewing an agency's technical evaluation under an FSS competitive acquisition, we will not reevaluate quotations, but will examine the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and the stated evaluation criteria. See Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5.

Here, we find that the agency's technical evaluation was reasonable and consistent with the terms of the RFQ. As discussed above, the RFQ required a vendor's centrifuge to be compatible with Beckman centrifuge rotors and that it have a specified containment system design. RFQ at 1. In this regard, Thermo submitted detailed technical literature which included specifications such as speed, capacity, temperature range, and dimensions, as well as relevant RCF formulas and calculations. Thermo's technical literature also assured that its centrifuge was compatible with 90 different models of rotors, including the eight rotors used by the CBER lab. Moreover, Thermo represented that other parts of HHS had been using Thermo centrifuges, including the model quoted here, with Beckman rotors for years without any problems.

Contrary to Beckman's arguments, the agency could reasonably rely on Thermo's technical literature and assurances of compatibility in finding that Thermo's ultracentrifuge met the RFQ's salient requirements. As a general matter, in evaluating proposals an agency may reasonably rely as accurate upon information provided by an offeror in its proposal. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5; NCR Gov't Sys. LLC, B-297959, B-297959.2, May 12, 2006, 2006 CPD ¶ 82 at 8-9; see also AlliedSignal, Inc., B-272290; B-272290.2,

Sept. 13, 1996, 96-2 CPD ¶ 121 at 5 (agency responsible for evaluating data submitted by offeror and ascertaining if it provides sufficient information to determine the technical conformance or acceptability of offeror's item). Moreover, the record does not show that the agency ignored significant countervailing evidence regarding the compatibility and safety of Thermo's centrifuge. In this regard, the protester has not provided any evidence demonstrating incompatibility. Rather, Beckman primarily directs our attention to statements it made to the laboratory chief to support the procurement of its own centrifuge and declarations from a Beckman sales consultant.<sup>8</sup>

In sum, Beckman has not showed that the agency's technical evaluation and selection decision were unreasonable, and the protester's disagreement with the agency's judgment as to which quotation offered the best value to the agency does not establish that the evaluation or source selection was unreasonable.<sup>9</sup> See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>8</sup> To the extent that the protester believes that Thermo's warranty will be unenforceable, the protester raises a matter of contract administration that is the responsibility of the contracting agency and is not for consideration by our Office. 4 C.F.R. § 21.5(a) (2011); Maryland Assemblies, Inc., B-236430, Nov. 17, 1989, 89-2 CPD ¶ 473 at 3 (enforcement of a warranty is a matter of contract administration); see also Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4 (declining to consider protester's claim that awardee will be unable to perform as specified).

<sup>9</sup> Beckman makes a number of other arguments that we find to be without merit. For example, Beckman complains that the agency treated the vendors unequally by seeking information or clarification from Thermo about the compatibility of its centrifuge, but not similarly requesting information from Beckman. Comments at 16. There was no reason, however, that the agency would need information from Beckman concerning the compatibility of that firm's centrifuges with its own rotors. Also, Beckman complains that the agency's evaluation of quotations and selection decision were inadequately documented. The contemporaneous record, however, includes Thermo's representations in its descriptive literature and numerous email exchanges between the laboratory chief and the CO regarding the chief's technical and warranty evaluation. In the context of this procurement that did not provide for a formal evaluation or award on a best value basis, this documentation was sufficient to satisfy documentation requirements of FAR § 8.405-2(e).