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**Comptroller General
of the United States**

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

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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Webco Dental & Medical Supplies, Inc.

File: B-410587

Date: January 8, 2015

John M. Manfredonia, Esq., and Jim Petersen, Esq., Manfredonia Law Offices, LLC, for the protester.

Debra J. Talley, Esq., and Peter G. Tuttle, Esq., Department of the Army, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that agency misevaluated the product offered by protester as unacceptable under a brand-name-or-equal specification is denied where the agency based its evaluation on the allegedly equal product's failure to meet specific salient characteristics that were stated in the solicitation, and the protester does not challenge the agency's evaluation findings.

DECISION

Webco Dental & Medical Supplies, Inc., of Hudson, Florida, a small business, protests the award of a contract to Executive Career Search Inc., of Oviedo, Florida, by the Department of the Army, under solicitation No. 20140617KODAK (also identified as FedBid Buy No. 623573) for dental imaging equipment and accessories for medical facilities in multiple states. Webco primarily argues that the Army misevaluated the firm's product as unacceptable and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The Army issued the solicitation as a reverse auction on June 17, 2014, originally seeking bids to supply two Carestream CS 9300-C dental imaging equipment bundles, and six Carestream intraoral sensors, under a brand-name-or-equal

specification.¹ Solicitation at 3. A subsequent series of solicitation amendments added one more imaging equipment unit bundle, and 142 more sensors, which significantly increased the target price. The amendments also restricted the competition to small businesses. Solicitation amend. 8 at 1-3.

The solicitation indicated that award would be made to the responsible firm whose bid conformed to the solicitation and was the “most advantageous . . . on the basis of price, technical capability, delivery, and past performance.” Solicitation at 2. A note in an attachment to the final amendment added a further statement that bids would be evaluated under three factors, in descending order of significance: technical, past performance, and price. Solicitation amend. 8, attach. 1 (Delivery Locations Chart), at 1 (“Note”).

Since the solicitation contained a brand-name-or-equal specification, it also listed a detailed set of salient characteristics that bids not offering the Carestream products were required to meet in order to be considered acceptable, and thus, equal. Many of the salient characteristics were grouped under the headings of cone beam CT [computed tomography] modality, panoramic modality, and cephalometric modality. Solicitation amend. 8, attach. 2 (“Technical Specifications”), at 1. Three of those salient characteristics are relevant to the issues in this protest:

- Under the cephalometric modality, the solicitation listed sensor technology as “CCD” [charge-coupled device]. Id.
- Under panoramic modality, the solicitation listed five radiological exam options: panoramic, segmented panoramic, maxillary sinus, LA [lateral] TMJ [temporomandibular joint] x2, and LA TMJ x4. Id.
- Under cone beam CT modality, the solicitation listed the field of view as “[r]anging from 5x5cm to 17x13.5cm.” Id.

Webco, Executive, and a third firm participated in the reverse auction. Executive’s bid was for the brand name Carestream products, while Webco’s bid was for another manufacturer’s product and sensors. When the reverse auction closed, the third firm

¹ Although the synopsis describes the solicitation as being “an invitation for bids (IFB), unless otherwise indicated herein,” Protest exh. 1, Synopsis from FBO.gov, at 1, as explained below the original solicitation appears to refer to the use of best value judgment. In addition, a note to a later amendment stated that award would be made to the firm whose bid was evaluated as the most advantageous, and specified that the evaluation would treat non-price factors as more important than price. Nonetheless, for the sake of consistency, we use the term “bid” in our decision.

had bid the lowest price; Webco had bid the next-lowest price, at \$1.1 million; and Executive had bid the highest price, at \$1.3 million.

In evaluating Webco's bid, the evaluator concluded that its units did not meet the three salient characteristics listed above. First, where the solicitation required CCD sensor technology for the cephalometric mode, the Webco-offered product utilized a TFT [thin-film transistor] sensor. Further, the product provided a different set of five radiological exam options than the ones specified in the solicitation. Finally, where the solicitation required fields of view ranging from 5x5 centimeters (cm) to 17x13.5 cm in the cone-beam CT modality, the Webco-offered product had field of view options that ranged from 5x5 cm to only 16x10 cm. Agency Report (AR) Tab 5.2, Evaluation Spreadsheet, at 1.

Using this information, the evaluator prepared a memorandum assessing both the third firm's and Webco's products under each of the salient characteristics. For Webco's products, the evaluator stated that the proposed units were unacceptable because they did not have the required field of view, they used TFT sensor technology (in cephalometric modality) instead of the required CCD technology, and they lacked the five specified radiological exam options. AR, Tab 5.1, Evaluator's Memorandum, at 3. Further, the product's sensors also did not meet three of the salient characteristics applicable to them. Id.

The contracting officer considered the evaluator's report, and concluded that no tradeoff was required because only Executive had submitted an acceptable bid. AR at 3. Accordingly, on September 25, the contracting officer awarded the contract to Executive. Id. This protest followed.

ANALYSIS

Webco's protest broadly claims that the products it offered are equal to the Carestream products, and argues that the Army improperly rejected the firm's bid. See Protest at 9; Protester's Comments at 2. Nevertheless, Webco has not shown that its bid offered items that met all of the salient characteristics specified in the solicitation. In particular, Webco does not argue that its products met the six characteristics that the Army's evaluator identified as the basis for finding Webco's bid to be unacceptable.

In reviewing protests of agency evaluations, we review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Ricoh America's Corp., B-402239, Feb. 22, 2010, 2010 CPD ¶ 55 at 3. Under a brand name or equal specification, where a firm offers to supply an allegedly equal product, the firm's submission must demonstrate that the product conforms to the salient characteristics listed in the solicitation. See Bryan Constr. Co., B-261482, Sept. 20, 1995, 95-2 CPD ¶ 142 at 2-3 (sealed bidding). If the firm's submission fails to do so, it is proper for the agency to reject the offered product. Id. Clearly

stated technical requirements in a solicitation are considered to be material to the needs of the government, so a vendor's submission that fails to conform to those material terms is technically unacceptable, and it may not form the basis for award. Team One USA, Inc., B-272382, Oct. 2, 1996, 96-2 CPD ¶ 129 at 8.

During the protest, the Army submitted a request to dismiss the protest which characterized the Webco-offered product as "broadly comparable to the brand name [product]." Dismissal Request at 3. However, as noted above, the contemporaneous record shows that the agency evaluated Webco's offered products as technically unacceptable because they did not meet certain of the solicitation's stated salient characteristics.² AR, Tab 5.2, Evaluation Spreadsheet, at 1; AR at 4. Webco has not meaningfully challenged the agency's finding, and thus we have no basis to question the Army's rejection of Webco's bid as unacceptable.

Webco's argument that the record does not adequately document the contracting officer's judgment in making a best value tradeoff between Executive's and Webco's bids provides no basis to sustain the protest. Where, as here, an agency reasonably finds only one firm's product to be technically acceptable, the agency is not required to make or document a tradeoff between the acceptable offer and ones that are unacceptable. Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 6.

The protest is denied.³

Susan A. Poling
General Counsel

² To the extent that Webco argues that the evaluation reflects bias in favor of the brand name item on the part of the Army, the record does not support this claim. Government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Marinette Marine Corp., et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 29.

³ Webco's protest also argued that the Army failed to evaluate past performance. We do not reach this question because Webco's bid was unacceptable, and thus the firm was not prejudiced by this alleged error. The record shows that the agency did consider whether these vendors had FedBid "alerts" with respect to their past performance. AR, Tab 5.2, Evaluation Spreadsheet, Past Performance Page.