



441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: TrillaMed, LLC

File: B-423042; B-423042.2

Date: January 8, 2025

Julie M. Nichols, Esq., and James S. Phillips, Esq., Roeder, Cochran, Phillips, PLLC, for the protester.

Christopher L. Lockwood, Esq., Jon D. Levin, Esq., Richard J.R. Raleigh, Jr., Esq., and Virginia L. Gibson, Esq., Womble Bond Dickinson (US) LLP, for Lovell Government Services, Inc., the intervenor.

Laura Reass, Esq., and Shawn Larson, Esq., Department of Veterans Affairs, 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

Protest that agency misevaluated quotations and made an unreasonable source selection decision is denied where the record shows the evaluation, conducted under simplified acquisition procedures, was reasonable and consistent with the terms of the solicitation and the source selection decision documented a reasonable price-technical tradeoff in favor of awardee's lower-rated technical quotation and lower price.

DECISION

TrillaMed, LLC, of Bingham Farms, Michigan, a small business, protests the award of a requirements contract to Lovell Government Services, Inc., of Pensacola, Florida, also a small business, under request for quotations (RFQ) No. 36C10G24Q0094, issued by the Department of Veterans Affairs (VA) for commercial cordless surgical bone saws for VA medical centers nationwide. TrillaMed contends that the VA misevaluated both firms' quotations and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued March 20, 2024, sought quotations from firms to supply specific types of cordless surgical bone saws and accessories, such as rechargeable batteries and

battery packs, under a requirements contract for a base year and four option years. Agency Report (AR), Tab 3, RFQ at 2-3. The RFQ informed vendors that the award would be made using simplified acquisition procedures consistent with Federal Acquisition Regulation (FAR) section 13.106-2 and identified two evaluation factors: technical and price. AR, Tab 3F, RFQ attach. D at 12. The contract was to be awarded to the vendor whose quotation provided the best value considering both technical capability and price, and the RFQ stated that the VA would make “comparative evaluations” and therefore the quotations should highlight any advantages of the equipment being offered. *Id.* The RFQ also specified that all items had to be “covered by the manufacturer’s warranty.” *Id.*

The RFQ defined the requirement as brand name or equal and specified the brand name Stryker and specific models of its products. Consistent with a brand name or equal specification, the RFQ identified salient characteristics that a quotation offering an equal product had to demonstrate to be eligible for award. AR, Tab 3, RFQ at 6-7. The RFQ did not provide details about the technical evaluation beyond a statement that satisfying all salient criteria was necessary for the quotation to receive an acceptable rating. AR, Tab 3F, RFQ attach. D at 12. There were five salient characteristics in the RFQ that applied to most¹ of the items: must be cordless/battery operated; keyless chuck or collet locking mechanism; temporarily submersible in water; able to be sterilized; and must be automated washer compatible. AR, Tab 3, RFQ at 6.

The RFQ also provided a pricing schedule in the form of an electronic spreadsheet that would calculate total evaluated prices using unit prices inserted by the vendor for each item in each year. The spreadsheet added a three percent fee, and then multiplied the result by the estimated quantities for each item. *See generally*, AR, Tab 3C, RFQ attach. A (electronic spreadsheet).

The VA received quotations from two vendors: TrillaMed and Lovell. Lovell quoted products by the manufacturer CONMED, of Largo, Florida, and submitted information to show that its products met the salient characteristics to be considered equal and eligible for award, for a total evaluated price of \$5.1 million.² AR, Tab 5, Best-Value Determination at 9. TrillaMed quoted the Stryker brand name products and submitted information to show that its products also met the salient characteristics, for a total evaluated price of \$5.8 million. *Id.*

The initial evaluation and source selection resulted in award to Lovell, which TrillaMed challenged in an agency-level protest. The VA decided to take corrective action that included making a new source selection decision.

¹ For the battery and battery pack contract line item numbers (CLINs), the only salient characteristic was that those items had to be able to be sterilized. AR, Tab 3, RFQ at 7.

² Prices discussed in this decision have been rounded by GAO.

The evaluation record after the completion of corrective action shows that the VA evaluators found that TrillaMed offered the brand name items and Lovell offered items that met the salient characteristics in the RFQ and therefore qualified as equal items, so both quotations were acceptable. The three evaluators (one of whom was a surgeon) also conducted a comparative evaluation in which they identified differences in the technical qualities of the two quotations, all of which favored TrillaMed's Stryker products: first, the Stryker batteries could be charged wirelessly to allow charging in any environment thereby improving workflow. Second, the Stryker products remained significantly cooler during operation than the CONMED products. Third, the Stryker products were less noisy during use. Fourth, only the Stryker products had a battery level indicator to allow personnel to confirm battery status before a surgical procedure. Fifth, only the Stryker products could be charged after sterilization, while within the sterile wrapping. And finally, the Stryker products had a 2-year warranty, while the length of the CONMED warranty was unspecified. AR, Tab 4, Comparative Technical Evaluation Report at 5-6. The evaluation report concluded by explaining the views of the evaluator who was a surgeon that the Stryker products had advantages in surgical use, they were already widely familiar among VA doctors, and they were backwards-compatible with existing equipment, all of which made them the best value in the view of the evaluators. *Id.* at 6.

The contracting officer, who served as the source selection authority, reviewed the reevaluations and concurred that the Stryker products offered by TrillaMed offered all the advantages over the CONMED products identified by the evaluators. However, the contracting officer also determined that those advantages were not significant enough to justify paying the higher evaluated price for TrillaMed's products--a difference of slightly less than \$700,000. AR, Tab 5, Best-Value Determination at 12. As a result, the contracting officer determined that Lovell's quotation offered the best value and selected it for award. *Id.*

The VA notified TrillaMed that Lovell's quotation had again been selected for award. TrillaMed then filed a second agency-level protest, which the VA denied. The firm then filed this protest with our Office. Contracting Officer's Statement (COS) at 5.

DISCUSSION

The protester argues that the VA failed to reasonably evaluate whether the awardee's products met the salient characteristics, failed to reasonably compare the differences between the Stryker and CONMED products, and made an unreasonable source selection decision. We consider each of the protester's arguments in turn and conclude that the record does not support the protester's contentions.

Reasonableness of Technical Evaluation

TrillaMed argues that the VA failed to make a comparative evaluation of the quotations, and unreasonably evaluated Lovell's quotation of CONMED products as equal to the Stryker products. Protest at 11. TrillaMed contends that the VA failed to recognize the

superiority of the Stryker products, failed to consider the views of physicians beyond whether both offerors' products met the salient characteristics listed in the RFQ, and failed to make a comparative assessment of the quotations. *Id.*

The VA contends that the record shows the evaluation was reasonable and consistent with the RFQ criteria. In particular, the agency argues that the record refutes TrillaMed's contention that the agency failed to conduct a comparative analysis of the quotations, and instead documents a thorough comparison of the features of both vendors' products and urged the selection of TrillaMed's product as superior. Memorandum of Law (MOL) at 5. The agency also notes that the evaluators' determination that Lovell's quotation offered an equal to the brand name requirement was merely a threshold determination that the CONMED products met all salient characteristics listed in the RFQ. *Id.* at 6. The agency maintains that TrillaMed has failed to identify any basis to sustain its challenges to the technical evaluation. *Id.* at 7.

As noted above, the RFQ indicated that it was a combined synopsis and solicitation for commercial items, and that the procurement would be conducted consistent with FAR subpart 12.6, which provides streamlined procedures for evaluation and solicitation of commercial items, thereby allowing the VA to employ simplified acquisition procedures. AR, Tab 3, RFQ at 2. Consequently, we will review the record to determine whether the procurement was conducted in a fair and equitable manner. *Finlen Complex, Inc.*, B-288280, Oct. 10, 2001, 2001 CPD ¶ 167 at 8-10. Where a protester challenges the evaluation of quotations in a procurement using simplified acquisition procedures, we will review the record to ensure the agency conducted the procurement consistent with a concern for fair and equitable competition, evaluated proposals in accordance with the terms of the solicitation, and exercised its discretion reasonably. *Government & Mil. Certification Sys., Inc.*, B-414740.5, Dec. 19, 2017, 2017 CPD ¶ 387 at 4. Further, where a solicitation uses a brand-name-or-equal specification, a quotation offering "or equal" products must demonstrate that the products conform to the salient characteristics listed in the solicitation. *CAMSS Shelters*, B-309784, B-309784.2, Oct. 19, 2007, 2007 CPD ¶ 199 at 4.

Our review confirms that the technical evaluation of both quotations was reasonable and consistent with the terms of the RFQ. First, as noted above, the RFQ listed five salient criteria. Although TrillaMed contends that the Stryker products are far superior to the competition and thus Lovell's CONMED items could not reasonably be considered equal, the protester provides no basis to question whether Lovell's CONMED products met all salient characteristics. For purposes of determining whether the CONMED products were equal in the sense of a brand-name-or-equal procurement, the record confirms that the VA properly found that Lovell had proposed equal products.

Although TrillaMed contends that the technical evaluation failed to make a comparative analysis of the quotations and failed to recognize the superiority of the Stryker products over the CONMED products, the record does not support this claim. The record shows that the technical evaluators did compare technical aspects of the two offerors' products and explained that TrillaMed's quotation offered the superior product technically and was preferred by most surgeons who would use the products. AR, Tab 4, Comparative

Technical Evaluation Report at 5-6. This evaluation satisfied the RFQ evaluation criteria, which specified that the agency would make a comparative assessment and did not delineate the substance of the evaluation in detail.

Next, as noted previously, the RFQ stated that all items had to be “covered by the manufacturer’s warranty.” AR, Tab 3F, RFQ attach. D at 12. In a supplemental protest, TrillaMed contends that Lovell failed to meet this requirement, which should have resulted in Lovell’s quotation being rejected as unacceptable on that basis, but the VA allegedly waived the requirement for Lovell. Comments & Supp. Protest at 4. As explained below, the record does not support the protester’s claim.

Lovell’s quotation contained a page explaining its offer to provide an annual service plan for the products through their manufacturer, CONMED. Supp. AR, Tab 3, Lovell Quotation Excerpt at 3. In explaining the scope of the service plan, the firm also stated that “[a]ll items within the request come with an OEM³ warranty.” *Id.* In later narrative explaining the service plan, Lovell’s quotation stated:

Unless specified within the service agreement, Hall Power handpieces covered under warranty or service agreement would receive preventative maintenance and parts repair/replacement, Hall Power attachments are all advanced exchange replacements under warranty and service, and lithium batteries are replacements under warranty/service agreement.

Id.

The quotation also provided the following:

Does the plan cover both software and parts? Yes. Any products which receive a software update/upgrade after purchase can be upgraded and updated within the OEM warranty period or under a service agreement . . .

Id.

The evaluators determined that this information was sufficient to show that both TrillaMed’s and Lovell’s quotations met the requirement to provide items that “come with an OEM warranty,” and noted in the evaluation report that TrillaMed’s warranty was for 2 years, while the length of Lovell’s warranty was “not stated.” AR, Tab 4, Comparative Technical Evaluation Report at 6. Based on our review of the record, we conclude that

³ Although the term OEM does not appear to be defined in in the excerpt of Lovell’s quotation provided in the record, our Office recognizes that the term is typically used as shorthand for the original equipment manufacturer of a product. In any event, we do not read TrillaMed’s protest as being based on a contention that the term OEM has a different meaning such that Lovell’s reference to an “OEM warranty,” *id.*, was distinguishable from a “manufacturer’s warranty” that the RFQ required. AR, Tab 3F, RFQ attach. D at 12.

the evaluators reasonably concluded that Lovell's quotation offered a manufacturer's warranty for all items, in compliance with the RFQ requirement.⁴

Separately, TrillaMed argues that the protest should be sustained because the contracting officer acted improperly by seeking more information about the evaluation of TrillaMed's warranty from one member of the evaluation panel. Supp. Comments at 4. Specifically, TrillaMed points to email communications between the contracting officer and an evaluator that took place during the corrective action. In those communications, the contracting officer asked an evaluator whether there were any aspects of TrillaMed's warranty that had been overlooked. See AR, Tab 17, Emails between Contracting Officer and Evaluator at 2-3. TrillaMed fails to show a legal basis for its contention that it was improper for the contracting officer to seek information from an evaluator to ensure that the evaluation has not overlooked a potentially significant aspect of a quotation that otherwise does not appear to be the best value.

It also appears that TrillaMed's contention the contracting officer's inquiry was addressed only to the evaluation of TrillaMed's quotation, and the same inquiry was not made about Lovell's quotation. Supp. Comments at 4. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 11; *DRS C3 Sys., LLC*, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 28; see *Statistica, Inc. v. Christopher*, 102 F.3d 1577 (Fed. Cir. 1996). TrillaMed has not shown how it was competitively prejudiced by the alleged failure to identify potentially overlooked advantages of Lovell's warranty. We therefore deny TrillaMed's challenges to the technical evaluation of the quotations.

Best-Value Tradeoff

TrillaMed argues that the contracting officer failed to take into consideration the comparative analysis of both quotations, as the RFQ required, and did not justify trading off the advantages of TrillaMed's quotation in favor of Lovell's lower-priced quotation. TrillaMed contends that the contracting officer improperly disregarded the technical differences between the quotations and made award to Lovell because its quotation was acceptable and lower-priced, contrary to the terms of the RFQ. Protest at 13; Comments & Supp. Protest at 8-9; Supp. Comments at 6-7.

The VA argues that the record shows that the evaluators identified technical differences between the quotations, and that the contracting officer considered those differences and exercised reasonable business judgment in concluding that the advantages of

⁴ In fact, TrillaMed ultimately seems to concede with respect to meeting the requirement for all products to be covered by a manufacturer's warranty that "in that regard [Lovell]'s technical proposal complies with the bare minimum requirement in the RFQ." Supp. Comments at 2.

TrillaMed's products were not sufficient to justify incurring its higher evaluated prices, and therefore Lovell's quotation offered the best value. MOL at 9; Supp. MOL at 7-8.

Our review of the record shows that the selection of Lovell's quotation was reasonable and consistent with the terms of the RFQ. Contrary to TrillaMed's insistence, the record shows that the evaluators compared the technical aspects of both offerors' products and found that TrillaMed's products had several technical advantages. The record also reflects that the contracting officer, acting as the source selection authority, understood the differences, and considered the advantages articulated by the evaluators--and the panel member who as a surgeon, specifically. The contracting officer did not reject the technical panel's conclusions.⁵ Further, the contracting officer properly sought information about whether TrillaMed's 2-year manufacturer's warranty had any significant value that had been overlooked to further contrast with Lovell's manufacturer's warranty of unspecified length and was informed that TrillaMed has not provided additional information in its quotation about the warranty.

The contracting officer then exercised business judgment by considering all the identified advantages of TrillaMed's products when deciding that those advantages did not justify paying its higher total evaluated price, and therefore Lovell's quotation provided the best value. The contracting officer explained the basis for this judgment with respect to the most significant elements of the evaluation, stating, for example, that wireless charging was unnecessary because wired charging would suffice; the advantages of a battery indicator and ability to charge after sterilization were mitigated by fully charging items before use; and the potential advantage of TrillaMed's better warranty were more than offset by its higher evaluated price. AR, Tab 5, Best-Value Determination at 12. Altogether, the contracting officer explained that the advantages of TrillaMed's quotation provided convenience but were not worth the higher price. *Id.* That judgment is within the reasonable discretion of the source selection authority to make under the terms of the RFQ.

The protest is denied.⁶

Edda Emmanuelli Perez
General Counsel

⁵ Although the evaluators urged the selection of TrillaMed's quotation as the best value, the record reflects that they were not aware of the offered prices. Accordingly, their views, however strong, were based only on the technical attributes of the quotations, not a price-technical tradeoff.

⁶ TrillaMed also argues that the protest should be sustained because the VA did not reevaluate Lovell's quotation as it said it would do when it announced corrective action in response to TrillaMed's first agency-level protest. Comments & Supp. Protest at 8. As explained above, TrillaMed fails to show any error in the evaluation of Lovell's quotation, so even if the VA failed to reevaluate Lovell's quotation, that alleged error was not prejudicial to TrillaMed.