



Decision

Matter of: Ortho-Clinical Diagnostics, Inc.

File: B-418946

Date: October 23, 2020

DeAnna Scarfone, Ortho-Clinical Diagnostics, Inc., for the protester.
Aimee Rider, Esq., and Julia P. Hatch, Esq., Department of the Navy, for the agency.
John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that agency's evaluation of protester's quotation was unreasonable is denied where record shows that evaluation was reasonable and consistent with the solicitation.
 2. Protest alleging lack of meaningful discussions where the protester did not receive or respond to the agency's discussions letter is denied where the record shows that the agency did not cause the non-receipt of the discussions letter or the protester's failure to respond, and the protester failed to inform agency of the unavailability of the protester's point of contact.
-

DECISION

Ortho-Clinical Diagnostics, Inc. (Ortho), of Rochester, New York, protests the award of a contract to Beckman Coulter, Inc., of Brea, California, under request for quotations (RFQ) No. N6264520R0004, issued by the Department of the Navy, Naval Medical Logistics Command for two clinical chemistry/immunoassay laboratory analyzer systems and one laboratory automation system, to provide laboratory testing of patient specimens at the Naval hospital in Jacksonville, Florida. Ortho contends that the agency unreasonably evaluated its quotation and failed to conduct meaningful discussions.

We deny the protest.

BACKGROUND

The RFQ contemplated award of a fixed-price contract on a best-value tradeoff basis considering six evaluation factors: conformance to essential characteristics; information

assurance; design quality and capability; past performance; price; and small business subcontracting plan. Agency Report (AR), Tab 1, RFQ at 14. As relevant here, under the conformance to essential characteristics factor, the RFQ instructed vendors to “include information to enable the evaluation of the proposed product and its conformance to the essential characteristics by submitting a quote including all necessary documentation demonstrating that its solution meets all of the requirements within the [e]ssential [c]haracteristics.”¹ *Id.* at 13. The RFQ stated that the agency would evaluate whether the quoted analyzer met the essential characteristics for this requirement; if it did not, that quotation would not be considered for award. *Id.* at 14.

The agency received quotations from five vendors, including Ortho. AR, Tab 11, Technical Evaluation at 1. The agency’s evaluators found that none of the quotations were technically acceptable. *Id.* at 3-4. In particular, the agency found that Ortho’s quotation failed to meet almost all of the essential characteristics requirements. *Id.* at 14-17. For many of the essential characteristics, Ortho’s quotation stated only that its “proposed solution meets this requirement,” and the agency found that Ortho “did not provide any information or documentation to support how the requirement is met.” See *id.* Accordingly, the agency rated Ortho’s quotation as “fail” under the conformance to essential characteristics factor.² *Id.* at 17.

Because the agency’s evaluators found that none of the quotations met the technical requirements, the agency opened discussions with all vendors. AR, Tab 13, Pre-Business Clearance Memorandum (BCM) at 37.³ On May 7, 2020, the agency emailed Ortho a discussions letter. AR, Tab 3, Ortho Discussion Letter. The letter identified all of the issues with Ortho’s quotation, including listing all of the essential characteristics that Ortho’s quotation failed to meet. See *id.* The email informed Ortho that “[t]o be further considered for award, a response to the discussion points must be submitted no later than 2:00 pm EST on Friday, 15 May 2020.” *Id.* The agency did not receive a response to its discussions letter; as a result, the agency concluded that Ortho had “removed themselves from competition” and did not consider Ortho for award. AR, Tab 14, BCM at 58.

The agency received revised quotations from all other vendors. After evaluating the revised quotations, the agency determined that two vendors submitted acceptable quotations. *Id.* The agency ultimately found that Beckman’s quotation offered the best

¹ The RFQ identified 27 different essential characteristics that the analyzer systems had to meet. AR, Tab 1, RFQ at 3-6, 14.

² The agency also rated Ortho’s quotation as unacceptable under the information assurance, design quality and capability, and small business subcontracting plan factors. AR, Tab 14, Business Clearance Memorandum, dated July 1, 2020, at 58

³ The agency’s report included two BCMs, which it referred to as the Pre-BCM and BCM. The Pre-BCM summarized the initial evaluation of quotations prior to discussions, and the BCM summarized the evaluation of the post-discussions revised quotations. See AR, Tab 13, Pre-BCM; AR Tab 14, BCM.

value because it met the requirements and its lower price was fair and reasonable. *Id.* at 60. After receiving notification of the award, Ortho requested and received a debriefing. During the debriefing, Ortho learned for the first time that the agency had emailed a discussions letter that Ortho never received, and therefore never answered. Following the debriefing, Ortho filed this protest with our Office.

DISCUSSION

Ortho protests that the agency's evaluation of its quotation was unreasonable and that the agency failed to conduct meaningful discussions. With respect to discussions, Ortho asserts that it never received the agency's email with the discussions letter and therefore was not aware that it had an opportunity to submit a revised quotation. Based on our review of the record, we deny the protest.

As an initial matter, Ortho challenges the agency's evaluation of its quotation and contends that the agency erroneously concluded that Ortho's quotation did not meet the requirements of the RFQ. Protest at 2-8; Comments at 6-9. In this regard, Ortho suggests that the agency did not need to conduct discussions because it should have evaluated the quotation as meeting the requirements. Comments at 7. We find this argument unpersuasive. As noted above, under the conformance to essential characteristics factor, the RFQ required offerors to provide sufficient documentation to enable the agency to evaluate whether the proposed analyzers met the essential characteristics identified in the RFQ. For many of these characteristics, Ortho's quotation stated only that it met the requirements, and provided no documentation or support for this statement. Given the requirements of the RFQ, it was reasonable for the agency to conclude that Ortho's quotation did not provide sufficient support to show that its quoted analyzers met these requirements.⁴ Accordingly, the agency's decision to issue a discussions letter to Ortho also was reasonable.

With regard to the agency's conduct of discussions, the agency emailed the discussions letter to Ortho's contract manager, who was identified in Ortho's quotation as the point of contact for all correspondence regarding the quotation. Protest, exh. B, Ortho Quotation at 2; AR, Tab 3, Ortho Discussions Letter. In its protest, Ortho states that the contract manager was on leave when the discussions letter was emailed in May 2020, but that the contract manager had an out-of-office notification that should have been sent automatically in response to the agency's email. Protest at 9. The out-of-office notification stated that the contract manager was on leave, and provided contact information for two other Ortho employees. Protest, exh. G, Out-of-Office Notification.⁵

⁴ Based on our review of the record, we also find that the agency's evaluation of Ortho's quotation under the other factors was reasonable.

⁵ The out-of-office notification that the protester provided as an exhibit to its protest was not sent to the agency in connection with this procurement; rather, Ortho explained that this notification was sent to "another contracting office." Protest at 9; Protest, exh. G, Out-of-Office Notification.

Ortho contends that the agency should have received the out-of-office notification and should therefore have sent the discussions letter to one of these two employees.

In response to Ortho's protest, the agency states that it never received any reply from Ortho, including an out-of-office notification, after it emailed the discussions letter. Contracting Officer's Statement at 14-15. The agency report included a statement from the agency's contract specialist, who sent out all agency communications for this procurement, including the email to Ortho. AR, Tab 16, Contract Specialist Statement ¶ 6. In the statement, the contract specialist stated that he "did not receive any response from Ortho in response to my 07 May 2020 Discussion Letter email."⁶ *Id.* ¶ 10. In addition, the contract specialist provided a screenshot of a search of his email inbox for emails received from Ortho; the screenshot did not show an out-of-office notification from Ortho.⁷ *Id.* 3-5. Because the agency did not receive an out-of-office notification, or any other indication that Ortho did not receive the discussions letter, the agency did not make any attempts to resend the email or further contact Ortho.

On this record, we find the agency's actions in conducting discussions to be reasonable. The agency emailed a discussions letter to Ortho's contract manager, the point of contact identified in Ortho's quotation. The agency states that it never received any response, including an out-of-office notification, from Ortho. While Ortho maintains that an out-of-office notification should have been sent automatically, the record does not contain any evidence that such notification was actually sent to the agency.

⁶ The contract specialist also explained that he requested a delivery receipt and read receipt for the discussions letter email he sent to Ortho. AR, Tab 16, Contract Specialist Statement ¶ 7. The specialist received a delivery receipt, and the agency report included a copy of that receipt. *Id.*; AR, Tab 4, Delivery Receipt. The delivery receipt does not indicate whether Ortho actually opened or saw the email. While the specialist did not receive a read receipt, he explained that this was not unusual "given that the email recipient often has the option to decline providing the read receipt." AR, Tab 16, Contract Specialist Statement ¶ 9. Thus, in our view, the delivery and read receipts are irrelevant to the question here, which is whether the agency received the out-of-office notification, or any other indication that Ortho had not received the discussions letter email.

⁷ Ortho contends that the inbox screenshot does not show the delivery receipt that the contract specialist received for the discussions letter email that he had sent, and that the screenshot therefore cannot be relied on as evidence that the agency did not receive an out-of-office notification from Ortho. Comments at 11-13. However, the screenshot captured a search of the contract specialist's inbox for emails from Ortho; in other words, it shows only those emails that were sent to the contract specialist by an Ortho employee. AR, Tab 16, Contract Specialist Statement at 3. The delivery receipt was sent by the contract specialist's email program, Microsoft Outlook. AR, Tab 4, Delivery Receipt. There is no reason to expect that Microsoft's delivery receipt would show up in a search for emails from Ortho employees.

Because there is nothing in the record showing that the agency received an out-of-office notification or any other indication that the agency should have known that the email containing the discussions letter failed to reach Ortho, there was no reason for the agency to confirm that Ortho received the email or to further contact additional Ortho employees.⁸ Accordingly, the record establishes that the agency was not the cause of Ortho's failure to receive or respond to the discussions letter, and therefore we cannot conclude that the agency violated any procurement law or regulation by finding that Ortho had removed itself from the competition.⁹ See *MOWA Barlovento, LLC-JV*, B-408445, Sept. 12, 2013, 2014 CPD ¶ 76 at 4-5 (finding no violation of procurement law or regulation where agency was not the cause of protester not receiving the agency's discussions letter).

The protest is denied.

Thomas H. Armstrong
General Counsel

⁸ The agency's email transmitting the discussions letter to Ortho stated "[p]lease acknowledge receipt of this email." AR, Tab 3, Discussions Letter. Based on this statement, Ortho argues that "[a]s a result of having not received an affirmative, live acknowledgement from an Ortho representative, the burden is on the contracting officer, in utilizing modern electronic communication, to ensure that his email communication was properly received by all offerors, including Ortho." Comments at 10. Ortho provides no legal support for this argument, nor are we aware of any. In our view, the agency's statement requested an acknowledgement of receipt of the email, but did not require Ortho to provide such an acknowledgement, nor did it create an obligation on the agency to confirm that Ortho received the email.

⁹ Moreover, Ortho's protest states that it was aware that its contract manager would be on leave starting April 9 through at least late June 2020. Protest at 9. Ortho submitted its quotation in December 2019. The agency sent the discussions letter in May 2020. Despite knowing that its point of contact for this quotation would be on leave for approximately three months beginning in early April, Ortho did not inform the agency of this fact or provide an alternative point of contact. In addition, in January 2020 the contract manager's email changed. Comments at 12-13. While Ortho configured its internal system to forward to this new email address any emails sent to the contract manager's old email address, Ortho did not inform the agency of the change in email address for the contract manager--i.e., its point of contact.