



Decision

Matter of: Nuclear Diagnostic Products

File: B-416227

Date: July 12, 2018

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for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest challenging award to lowest-priced, technically acceptable quotation is denied where agency was not required to allow correction of a mistake in the protester's quotation that was not apparent.

DECISION

Nuclear Diagnostic Products (NDP), a small business of Rockaway, New Jersey, protests the award of a contract to Cardinal Health 414 LLC (Cardinal Health), of Dublin, Ohio, under request for quotations (RFQ) No. 36C24218Q0184, issued by the Department of Veterans Affairs for radiopharmaceuticals. The protester contends that the agency should have recognized, and allowed it to correct, a mistake in its quotation.

We deny the protest.¹

BACKGROUND

The RFQ, issued on January 8, 2018, contemplated award of an indefinite-delivery, indefinite-quantity requirements contract using Federal Acquisition Regulation (FAR) subpart 13.5, Simplified Procedures for Certain Commercial Items, to the lowest-priced, technically acceptable quotation. Agency Report (AR), Tab 2, RFQ, at 1, 57. The RFQ

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

contemplated a three-year ordering period, beginning on February 22, 2018, and ending on February 21, 2021, for radiopharmaceuticals to support patient care in region 2 (New York) of the agency's Veterans Integrated Service Network. Id. at 1, 16.

This RFQ replaced a prior solicitation, issued on December 11, 2017, for this procurement. Contracting Officer's Statement (COS) at 1; RFQ at 53 ("This solicitation replaces solicitation number VA242-17-Q-1178."). Three quotations, including a quotation from NDP, were submitted in response to the original solicitation; however, all were found to be unacceptable, and therefore the contracting officer cancelled the original solicitation. COS at 1-2.

The instant RFQ required that vendors submit a completed price sheet for 99 contract line item numbers (CLIN). RFQ at 23-27, 53. For each CLIN, the price sheet provided the name of the product, unit of measure, size, and quantity, and required that vendors input a price for each millicurie (mCi) or bulk dose, and a total price based on the quantity provided; the price sheet also required that vendors input a total price for each year of performance, and for the entire three-year performance period. Id. at 23-27. As relevant to the protest, CLINs 0001 and 0002 stated as follows:

CLIN	Name of Product	Unit of Measure	Size	Quantity
0001	F18-FDG, unit dose	Unit Dose	15 mCi	2328
0002	F18-FDG, bulk dose, 6 patients/[day], 5 [days/week], 52 [weeks/year]	Unit Dose		1560

Id. at 23.

The agency again received three quotations in response to the RFQ, including a quotation from NDP. Award Decision Document at 2. NDP's total price was \$7,427,799, another vendor's total price was \$6,092,672, and Cardinal Health's total price was \$5,207,692. Id. The contracting officer concluded that Cardinal Health's quotation was the lowest-priced, technically acceptable quotation, and awarded the contract to Cardinal Health on February 22. COS at 2; Award Decision Document at 4.

The agency notified NDP that it had not been selected for award, and NDP filed an agency-level protest. On March 26, the agency denied NDP's agency-level protest, and this protest followed.

DISCUSSION

The protester argues that there was a clear error on the face of its quotation, and the contracting officer abused her discretion by not allowing NDP to correct the mistake. Protest at 1, 4. NDP argues that, as corrected, its quotation would be the lowest-priced, technically acceptable quotation, with a total price of \$5,153,229, an amount that is \$54,463 less than Cardinal Health's price, and therefore it should receive the contract

award.² Id. Specifically, NDP argues that the contracting officer should have recognized that it had erroneously multiplied its intended CLIN 0002 price for the F18-FDG bulk dose by six (patients/day), further compounded its mistake by multiplying that price by 1,560 (the quantity), and then multiplying that price by three (the three-year performance period), thereby incorrectly inflating its price by \$2,274,480. Id. at 3. NDP argues that the agency should have known there was an error in the quotation based on the large gap between its price and Cardinal Health's price, and further reviewed NDP's quotation to discover that its proposed unit price for CLIN 0002 was intended to be the same as its proposed unit price for CLIN 0001.³ Id.

The agency argues that it was not clear on the face of NDP's quotation that there was any mistake in its price. Memorandum of Law (MOL) at 3-5. In the agency's view, NDP made a complex math error, and therefore the agency was not obligated to provide NDP an opportunity to clarify its quotation before award. COS at 2. The agency also argues that the price difference between NDP, a small business, and the two other large businesses that submitted quotations was not large enough to indicate that there was an error in NDP's quotation. Id. The agency further argues that the contracting officer had no reason to know there was a mistake in NDP's proposal because NDP's CLIN 0002 price in response to the RFQ was the same as the CLIN 0002 price NDP submitted in response to the original solicitation. Id.

As a preliminary matter, where, as here, simplified acquisition procedures are used, the evaluation procedures provided for in FAR parts 14 and 15, including the procedures for the correction of mistakes, are not mandatory. See FAR § 13.106-2(b); Paraclete Contracts, B-299883, Sept. 11, 2007, 2007 CPD ¶ 153 at 4. In an appropriate case, an agency may allow an offeror to correct a clerical error in a cost or price proposal through clarifications, as opposed to discussions. Joint Venture Penauillie Italia S.p.A. et al., B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 8; see FAR § 15.306(a)(3). However, both the existence of an error and the intended pricing must be apparent from

² By our computation, NDP's total price would be \$5,153,319, which is \$54,373 less than Cardinal Health's total price, however, the discrepancies are likely due to rounding and are in any event immaterial to this decision.

³ The protest also states, without citation to any law or regulation: "[W]e also note that there is an established preference in any event for small businesses such as NDP." Protest at 4. To the extent that the protester is arguing that it should have received a price evaluation preference, this argument fails to set forth a valid legal and factual basis of protest. See 4 C.F.R. § 21.5(f). The RFQ was issued on an unrestricted basis and included FAR clause 52.219-4, Notice of Price Evaluation Preference for [Historically Underutilized Business Zone (HUBZone)] Small Business Concerns. RFQ at 1, 40. The protester does not represent that it is a HUBZone small business, and we are unaware of any "established preference" that requires an agency to make an award to a small business that submits a higher-priced quotation in response to a solicitation that provides for award on a lowest-priced, technically acceptable basis.

the face of the proposal. Battelle Mem'l Inst., B-299533, May 14, 2007, 2007 CPD ¶ 94 at 3; CIGNA Gov't Servs., LLC, B-297915.2, May 4, 2006, 2006 CPD ¶ 74 at 9.

Here, we agree with the agency that it was not obvious from the face of NDP's quotation that there was a clerical mistake that the agency could have allowed NDP to fix with clarifications. The solicitation required that vendors provide the pricing for a bulk dose of F18-FDG. The solicitation explained that the bulk dose was for 6 patients a day, 5 days a week, for 52 weeks a year, which equals 1,560; 1,560 is the quantity set forth in CLIN 0002. It would not be obvious to the contracting officer, therefore, that NDP had erroneously multiplied its intended CLIN 0002 price for the F18-FDG bulk dose by 6 (patients/day) and then multiplied that amount by 1,560 (the quantity).

Moreover, even if the contracting officer had found NDP's CLIN 0002 price to be so high as to conclude there was a mistake in the proposal, NDP's intended pricing is not apparent on the face of the proposal. In this regard, NDP does not explain why the contracting officer should have known that NDP intended to propose the same price for a bulk dose of F18-FDG as a unit dose of F18-FDG. Finally, as noted, NDP had two opportunities to submit a quotation in response to the agency's requirement, and twice submitted a quotation that contained an error. We see no reason to hold the contracting officer accountable for not identifying a mistake in the protester's quotation when the protester itself did not identify the mistake until after contract award.

Since NDP's intended price for CLIN 0002 was not apparent from the face of its quotation, correction of the mistake through clarifications would not have been proper. On this record, we find the agency's award of the contract to Cardinal Health reasonable.⁴

The protest is denied.

Thomas H. Armstrong
General Counsel

⁴ In a post-award communication to the agency and in response to an argument set forth in the agency report, NDP contends that the unit measure for CLIN 0002 should have read "vial" rather than "unit dose." Letter from NDP to Agency, Feb. 23, 2018; Comments at 2-3. We fail to see how this argument supports the protester's position that the error in its proposal was a clerical error apparent from the face of the quotation.