



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Imaging Technology Corporation

File: B-270124

Date: February 12, 1996

Larry Loughrey and Robert F. Rayle for the protester.

Susan Bernstein, Esq., Federal Emergency Management Agency, for the agency.
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General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under request for quotations (RFQ), which sought prices for items listed on Federal Supply Schedules (FSS) and did not request submission with quotations of information demonstrating compliance with the technical requirements set out in the RFQ, rejection of lowest-priced quotation from FSS contractor without consideration of its technical acceptability was improper.

DECISION

Imaging Technology Corporation (ITC) protests the award of a purchase order for computerized badging systems to Network Engineering Inc. (NEI) under request for quotations (RFQ) No. EMQ-5-4442/R, issued by the Federal Emergency Management Agency (FEMA). The protester contends that the order should have been placed with it since its quotation was lower in price than NEI's.

We sustain the protest.

The RFQ, which was issued on September 14, 1995, sought quotations for 15 computerized photographic identification card systems. The solicitation defined 32 features and capabilities required of the systems. The RFQ advised that all items were to be "quoted off a current GSA schedule" (although non-schedule items were permitted if they could be ordered together with the scheduled buy or totaled less than \$25,000), with award to be made to the lowest-priced schedule vendor, including the value of non-schedule items. Vendors were instructed to furnish the number of the schedule from which, and to designate the items on which, they were quoting, and to provide price information. The RFQ did not require the submission of descriptive literature or a narrative describing how a vendor's proposed system would meet the RFQ's requirements.

Four quotations were received by the September 20 closing date. ITC's quotation contained only the information specifically requested by the RFQ, i.e., unit and total

prices for 15 badging systems and 4 years maintenance and warranty; the number of the Federal Supply Schedule (FSS) contract from which it was quoting; and an item-by-item designation of the components (e.g., computer, software, printer, monitor, etc.) comprising its system and their prices. NEI, on the other hand, responded to the RFQ with a proposal which contained an individual statement of compliance with each of the specifications (with arguably one exception)¹ and descriptive literature establishing compliance with some of the requirements. NEI's response also designated the number of the FSS contract and the items on which it was quoting, and furnished itemized price information; it did not provide overall unit and extended prices for the badging systems and maintenance/warranty, as requested, however.

The contracting officer evaluated the vendors' offered prices and determined that NEI's overall price for the basic systems requested was \$285,618.75,² which was low; ITC's quotation, with an overall price of \$295,192.00, was second low. The contracting officer then referred the quotations for technical evaluation. The technical evaluator concluded that it was impossible to evaluate the acceptability of ITC's quotation since it contained no discussion of the system's capabilities. Since NEI's price was lowest and its quotation had been determined to be technically acceptable, the contracting officer issued a purchase order for the badging systems to NEI on September 27.

ITC argues that the contracting officer miscalculated NEI's price and that it was not in fact low.³ We have reviewed NEI's figures and the agency's calculations, and we agree. It is apparent that in arriving at the figure \$285,618.75, the contracting officer failed to include two items of cost identified by NEI on its itemized pricing

¹In response to the requirement that the system "be capable of volume throughput (minimum 1 card every 65 seconds)," NEI stated that its system's "volume throughput and actual print time will not exceed 105 seconds (based on card design)."

²Although the contracting officer does not explain how she arrived at this figure, we assume that she multiplied NEI's unit price of \$15,232 per badging system by 15 (since 15 systems were to be ordered), which yields a subtotal of \$228,480, and then added \$57,138 (\$3,809.25 per badging system for 4 years maintenance and warranty x 15 systems).

³The protester also alleged in its initial protest that the agency had improperly waived the requirement for a throughput speed of 65 seconds or less for NEI, which allowed that company to offer a less expensive printer than the one offered by ITC. In view of our conclusion that the agency miscalculated NEI's price and that it was in fact higher than ITC's, we need not address this argument.

sheet (and included in the purchase order issued): \$9,800 for database development, installation, and maintenance; and \$8,925 for training. The RFQ required that vendors provide at least three training sessions for each system purchased, and the cost of this training was included in calculating the other vendors' total prices. NEI's total price, properly calculated including these items, is \$304,343.75, approximately \$9,000 higher than ITC's price.

FEMA disputes this figure, arguing that although the contracting officer erred in her computations, the correct total price for NEI's systems is \$288,068.75, not \$304,343.75. The agency contends that although the contracting officer incorrectly omitted \$9,800 for database development from her calculations, she wrongly included \$7,350 in the evaluated price for 15 (i.e., one per badging system) "Quikworks Signature Capture Option kits" at a price of \$490 per kit. According to the agency, the kits were offered by NEI as an option, not in response to an RFP requirement, and their cost therefore should not have been included in calculating the price of NEI's basic system.

Based on our review of the RFQ, NEI's quotation, and the purchase order issued, we see no basis to conclude that NEI offered the kits as an option not to be considered in calculating NEI's basic price. NEI listed 15 Quikworks Signature Capture Option Kits (with an extended price of \$7,350) in its basic quotation, presumably in response to a solicitation requirement that the badging system offered have the capability to capture the signatures of the Director of Security and the badge applicant. In addition, the price breakdown attached to the purchase order included the cost of the 15 Signature Capture Option kits in the price of the base systems.

Furthermore, even if FEMA were correct regarding the \$7,350 for the kits, NEI's price would still be higher than ITC's. The sum of \$288,068.75--NEI's price as calculated by FEMA--does not include any training costs, which in NEI's case totaled \$8,925 for the 15 systems; when that amount is added, NEI's price is \$296,993.75, which exceeds ITC's total of \$295,192. If it is the agency's position that training costs should not have been included in calculating the costs of the badging systems offered, then the costs of training should have been subtracted from the other vendors' price totals as well, so as to place them on comparable footing with NEI. In ITC's case, this would have meant a reduction of \$30,000 in its overall evaluated price--to \$265,192, which is considerably lower than NEI's evaluated price.

When ordering from the FSS, a procuring agency is required to order from the schedule contractor offering the lowest overall price for products meeting its needs. Federal Acquisition Regulation (FAR) § 8.404(b)(2), (c)(1); The Mart Corp., B-254967.3, Mar. 28, 1994, 94-1 CPD ¶ 215; Garrett-Callahan Co., B-246895, Apr. 8, 1992, 92-1 CPD ¶ 352. Here, as discussed above, ITC's price was lowest, yet FEMA never performed a technical evaluation to determine whether the equipment that it

offered would meet the agency's needs. The agency justifies its rejection of ITC's quotation as technically unacceptable on the ground that it included no information demonstrating that the system offered met the technical requirements in the RFQ. This argument ignores the fact that the RFQ did not call for submission of any such information; it asked vendors only to identify the items they were offering and the applicable FSS schedule, and provide prices. Where, as here, a schedule contractor's price is low, and there is no requirement in the RFQ for the submission of information demonstrating compliance with the solicitation's requirements, we think that the agency has a duty to seek out the information that it requires to evaluate technical acceptability--by contacting the General Services Administration, which manages the FSS program, or by requesting additional information from the vendor itself--prior to selecting a vendor. See Garrett-Callahan Co., *supra*. In this regard, we note that an RFQ is a negotiated procurement and agencies are not barred from holding discussions with, and seeking additional information from, vendors after the submission of quotations. See CEFCO Enters., Inc., B-227490, July 2, 1987, 87-2 CPD ¶ 10. By not doing so here, the agency failed reasonably to ensure that its selection was to a vendor that met the agency's needs at the lowest overall cost, as required by FAR § 8.404. See Garrett-Callahan Co., *supra*.

Since the agency rejected ITC's quotation, which was low, without determining whether the equipment that it offered would meet the agency's needs, we sustain the protest. We recommend that FEMA take steps to obtain additional information concerning the badging systems that ITC offered to ascertain whether or not the systems meet the specifications set forth in the RFQ. If, after considering that information, the agency determines that ITC's system will meet its needs, we recommend that it cancel the purchase order awarded to NEI and issue a purchase order under ITC's FSS contract.⁴ We also recommend that the agency pay the

⁴The agency has advised us that it accepted delivery of one badging system from NEI prior to the filing of ITC's protest; our recommendation thus applies to the remaining systems only.

protester the costs of filing and pursuing its protest. See Bid Protest Regulations, section 21.8(d)(1), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8(d)(1)). In accordance with section 21.8(f)(1) of the Bid Protest Regulations, ITC's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 90 days after receipt of this decision.

The protest is sustained.

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