



## Decision

**Matter of:** Medfinity, LLC

**File:** B-403366.2

**Date:** October 28, 2010

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Peter Pham for the protester.

Maj. James W. Nelson, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Under brand name or equal solicitation, protester's proposal properly was rejected as unacceptable where agency reasonably determined that offered "equal" product failed to satisfy the stated salient characteristics.

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### DECISION

Medfinity, LCC, of Fountain Valley, California, protests the issuance of a purchase order to Dexis, LLC, of Des Plaines, Illinois, under request for quotations (RFQ) No. W81XWH-10-T-0268, issued by the Department of the Army, U.S. Army Medical Research Acquisition Activity, for dental filmless imaging systems (DFIS). Medfinity argues that the agency improperly rejected its lower-priced quotation.

We deny the protest.

The RFQ, issued June 9, 2010 on a brand name or equal basis, solicited quotations for 100 DFISs. The solicitation identified the Dexis DX101 system as the brand name product, listed salient characteristics that had to be satisfied by any product offered as "equal" to the brand name item, and required that vendors submit descriptive literature, such as illustrations or drawings, to demonstrate compliance with those characteristics. RFQ at 5; RFQ amend 2, at 2. Equal products were to be evaluated on the basis of information furnished by the vendor or identified in the quotation and reasonably available to the agency. RFQ at 5. The purchase order was to be issued to the vendor submitting the lowest-priced, technically acceptable quotation.

The salient characteristics required that the system be composed of, at a minimum, a sensor; a Panasonic Toughbook Model CF-28PBJGZPM laptop computer or equivalent; imaging software; and bitewing rings, holders and accessories, all contained in a Hardigg case. RFQ at 3. The RFQ identified specific requirements for the sensor, the software, the laptop, and the Hardigg case, including (as relevant here), requirements that the sensor have the cord at a 45-degree angle (allowing for vertical bitewings and lower sensor failure rate) and connect to the laptop via a Personal Computer Memory Card Interaction Association (PCMCIA) card capable of transferring images at 100 megabytes per second, and that the software be Digital Imaging and Communications in Medicine (DICOM) compliant. RFQ at 3.

Dexis and Medfinity submitted quotations by the June 21 due date. Dexis quoted the brand name product, while Medfinity quoted the EVA Intraoral X-Ray System, a purported equal to the brand name, the Rugged Notebook Eagle D14RM laptop, and a Mil-Standard Waterproof case. Agency Report (AR) at 4. The protester provided a two-page proposal for the EVA, with EVA, laptop, and hard case descriptive literature. AR, Tabs 5-8.

The agency determined that Medfinity's EVA was unacceptable because there was not enough information provided or readily available to conclude that the product met all salient characteristics.<sup>1</sup> AR at 5; AR, Tab 10, Medfinity Debriefing, at 6. For example, while Medfinity's quotation stated that the EVA was DICOM compliant, the agency determined that the provided and reasonably available documentation did not clearly establish DICOM compliance. Similarly, while the protester's quotation stated that the cord on the sensor was "at a 45 degree angle or directly out the back allowing for vertical bitewings and lower sensor failure rate," the agency determined that the provided and reasonably available documentation did not clearly indicate that the cord in fact is at the required 45 degree angle. Likewise, while Medfinity's quotation stated that the EVA connected "to the laptop via a [universal serial bus] USB or PCMCIA Card," the agency determined that the provided and reasonably available documentation mentioned only an interface via USB, with no mention of a PCMCIA card interface. AR, Tab 10, Medfinity Debriefing, at 5. The agency also could not clearly establish that the software provided with the system allowed users to view multiple dates of service side-by-side, or that the required accessories (bitewings, holders, etc.) would be provided. The agency therefore issued a purchase order to Dexis.

Medfinity contends that the agency erred in rejecting its product, arguing, for example, that it "certified" that the EVA cord met the 45-degree angle and DICOM compliance requirements. Protest at 2. Medfinity further asserts that the RFQ actually required that the sensor connect to the laptop via either USB or PCMCIA card, and that its product should have been found to meet this requirement by virtue

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<sup>1</sup> An Army biomedical engineer evaluated the two quotations. AR at 4, n.4.

of Medfinity's certification to that effect. Id. Medfinity notes that it offered to demonstrate its product to the agency.

It is well-settled that it is the vendor's responsibility to include sufficiently detailed information in its proposal (or quotation) to establish that the item offered will meet the solicitation requirements, and that blanket statements or certifications of full compliance are insufficient. IVI Corp., B-310766, Jan. 23, 2008, 2008 CPD ¶ 21 at 3. With respect to a brand name or equal solicitation, a firm offering an equal product must demonstrate that the product conforms to the salient characteristics of the brand name product listed in the solicitation. American Gov't Marketing, Inc., B-294895, Nov. 22, 2004, 2005 CPD ¶ 109 at 2. The contracting agency is responsible for evaluating the data submitted by the vendor and ascertaining if it provides sufficient information to determine if the vendor's product is acceptable. See ACR Elec. Inc., B-266201, Jan. 24, 1996, 96-1 CPD ¶ 19 at 4. We will review an agency's determination in this regard to ensure that it was reasonable. Id.

The agency's determination here was reasonable. The record supports the agency's finding that Medfinity's quotation consisted primarily of blanket statements of compliance, without explanation or elaboration. For example, the proposal simply states that the EVA "is DICOM compliant," connects to the laptop "via a USB or PCMCIA Card," and has "the cord at a 45° angle or directly out the back. . . ." AR, Tab 8, Medefinity Proposal at 1. The technical data accompanying the quotation was limited to a 3-page product brochure that not only did not establish compliance with these three requirements, but failed to address the majority of the salient characteristics detailed by the RFQ. Medfinity's assertion that the RFQ required either a USB or PCMCIA card interface is incorrect. The RFQ specifically required only a PCMCIA card interface; there was no mention of a USB interface. While Medfinity's proposal stated that its sensor connects to the laptop via USB or PCMCIA card, its product brochure only stated that it connected via USB. AR, Tab 5, Medfinity Proposal, EVA Descriptive Literature, at 2. Finally, the agency was not required to permit Medfinity to demonstrate its product, since there was no provision for such a demonstration in the RFQ. Rather, as noted, vendors were to establish the compliance of their products through descriptive literature or other evidence submitted with their quotations.

In its comments on the agency report, Medfinity raises a number of arguments for the first time. These arguments are untimely. For example, the protester asserts that the only Dexis sensor with a PCMCIA card connection was discontinued a year ago, and that the PCMCIA card requirement unreasonably restricts competition because Dexis is the only manufacturer that uses PCMCIA technology. Protester Comments at 2-4. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation that are apparent prior to the time set for receipt of proposals (or quotations) be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (2010). Medfinity's arguments concern the specified features of the brand name product; to the extent that it believed these features were unduly restrictive or otherwise should not have been included in the RFQ, it was required to protest on

these grounds before quotations were due. Since its protest was not filed until after issuance of the purchase order, its protest on these grounds is untimely and will not be considered.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel