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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Zarc International, Inc.

File: B-292708

Date: October 3, 2003

Andrew N. Cook, Esq., Bell, Boyd & Lloyd, for the protester.
Herb Schreiber for Guardian Protective Devices, Inc., an intervenor.
W. Kent Davis, Esq., Department of Homeland Security, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where request for quotations specified protester's product by product number and prohibited substitutions, issuance of an order for alternative vendor's equivalent product is nonetheless unobjectionable where agency determined that equivalent product would meet its needs at a lower price than named vendor's, and protester fails to establish that had it known of agency's willingness to consider equivalent products, it would have altered its quotation to its competitive advantage.

DECISION

Zarc International, Inc. protests the issuance of a purchase order for inert oleoresin capsicum spray (commonly referred to as pepper spray) to Guardian Protective Devices, Inc. under request for quotations (RFQ) No. 03000127, issued by the Department of Homeland Security. Zarc contends that the RFQ specified a product which only Zarc manufactures and sells, and thus that award to any other firm is improper.

We deny the protest.

The agency explains that the inert spray being acquired here is used to train Federal law enforcement officers in the use of the working version of the spray, a non-lethal law enforcement tool that the officers will carry and use in the field. The RFQ, which the contracting officer posted on the FedBizOpps website on July 22, 2003, described the item to be acquired as "Cap-stun Inert Oleoresin Capsicum Spray/Item #T-305 No Substitutions Acceptable." RFQ at 2. Zarc responded with a quotation of \$61,236 for delivery of the 9,720 units requested.

Shortly after posting of the RFQ, Guardian contacted the agency and asked that a pepper spray product listed on its Federal Supply Schedule contract be considered for the order. The agency requested information from Guardian concerning the physical characteristics of its product and determined that the product met its needs. Upon notification that its product would be considered, Guardian furnished a quotation of \$41,474 for the quantity requested. On August 8, the agency issued an order to Guardian. On August 14, Zarc protested to our Office.

Zarc contends that issuance of an order to Guardian was contrary to the terms of the RFQ, which specified a Zarc product number (T-305) and prohibited substitutions. The protester further argues that the Guardian product differs from the Zarc product in terms of its chemical make-up and health impact.

The fact that the RFQ specified a Zarc product number and barred substitutions did not preclude the agency from issuing an order for an equivalent Guardian item, given the agency's determination that the Guardian item will meet its needs. Quotations are informational responses that are not subject to government acceptance; thus, there is no requirement that they comply precisely with the terms of an RFQ. Spacesaver, B-224339, Aug. 22, 1986, 86-2 CPD ¶ 219 at 2, aff'd, Spacesaver-Recon., B-224339.2, Sept. 19, 1986, 86-2 CPD ¶ 328, recon. denied, Spacesaver-Second Recon., B-224339.3, Oct. 16, 1986, 86-2 CPD ¶ 435. Along the same lines, it is irrelevant whether the Guardian product is identical to the Zarc product in terms of its chemical make-up and health impact; the issue is whether the Guardian product meets the agency's needs—which the agency has determined it does—and not whether it is precisely the same in all respects as the specified product.

That said, where an agency determines that an item other than the one specified in an RFQ will meet its needs, it generally should amend the RFQ and reopen the competition. U.S. Technology Corp., B-224372, Oct. 2, 1986, 86-2 CPD ¶ 383 at 3. We will sustain a protest objecting to an agency's failure to amend an RFQ to clarify that products other than a specified one will be considered only if the protester establishes a reasonable possibility that it was prejudiced by the agency's failure to amend, however; that is, where the protester offers some evidence that had it known of the potential for competition, it would have altered its quotation to its competitive advantage. See Datastream Sys., Inc., B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6. We have recognized the possibility of prejudice where a protester that was the only vendor offering the product specified in an RFQ alleges that it would have lowered its price had it been aware of the potential for competition, and where the vendor offering the specified product alleges that it could have offered a different, lower-priced, acceptable product had it been on notice that the agency would consider equivalent items. U.S. Technology Corp., supra, at 3.

Here, Zarc has not alleged that it would have offered an item other than its product number T-305 had it been on notice that the agency would consider equivalent items. Moreover, while the protester does assert that "[a]t the very least, opening up the

competition to other competitors would have impacted Zarc's pricing decision on its submission in the procurement at issue," Protester's Comments, Sept. 22, 2003, at 1, Zarc does not allege--nor, given that the protester's unit price was 50 percent higher than Guardian's (\$6.30 vs. \$4.20), does it appear--that Zarc would have quoted a price lower than Guardian's had it been aware of the potential for competition. Accordingly, we see no reasonable basis to conclude that Zarc was prejudiced by the agency's failure to amend the RFQ to reflect its willingness to consider products other than the specified Zarc product.

The protest is denied.

Anthony H. Gamboa
General Counsel