



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kasco Fuel Maintenance Corp.

File: B-274131

Date: November 22, 1996

F. J. Crovato for the protester.

Mort Ende, for Environmental Products Sales Corporation, an intervenor.

Lenore K. Strakowsky, Esq., Department of the Navy, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposal failed to establish compliance with specifications is denied where agency reasonably found compliance based on descriptive literature in proposal and knowledge and literature evaluators already possessed concerning awardee's equipment; although proposal failed to include information regarding performance of logistics support requirements, waiver of this deficiency was unobjectionable since it did not prejudice protester.

DECISION

Kasco Fuel Maintenance Corp. (KFMC) protests the award of a contract to Environmental Products Sales Corporation (ENPRO) under request for proposals (RFP) No. N68335-96-R-0109, issued by the Naval Air Warfare Center (NAWC) Aircraft Division, Lakehurst, New Jersey, for antifreeze recycling units.

We deny the protest.

The RFP contemplated award of a fixed-price contract for machines to recycle commercial antifreeze from various commercial vehicles and light duty ground support equipment. Proposals were required to include descriptive literature which established compliance with performance specifications in the RFP. The evaluation was to be on a pass/fail basis, with award to be made to the lowest-cost, technically acceptable offeror. Three proposals were submitted, including KFMC's and ENPRO's (the third was rejected as unacceptable). Award was made to ENPRO based on its substantially lower price.

KFMC argues that ENPRO's proposal failed to establish that its unit meets certain specifications and failed to comply with other requirements and therefore should

have been found technically unacceptable; it also alleges specific defects in the evaluation process. As discussed below, we find no merit to KFMC's allegations.

SPECIFICATION REQUIREMENTS

KFMC maintains that ENPRO's proposal fails to establish that its unit meets the requirement that the antifreeze recycling unit produce recycled antifreeze with glycolic acid at a maximum level of 300 parts per million (ppm) and formic acid at 45 ppm. This argument is without merit. The literature included with ENPRO's proposal states that glycolic and formic acids are "neutralized or precipitated as potassium salt with glyclean and retained in filters." The agency read this statement as indicating that virtually all glycolic and formic acids would be removed, and that ENPRO's unit therefore met the requirement. We see nothing unreasonable in this conclusion. While KFMC claims that it was unreasonable for the evaluators to rely on this statement without test data or other objective supporting evidence, the RFP required no such evidence. Moreover, we note that KFMC's proposal also included no objective evidence supporting KFMC's proposal claim that its unit complies with the specification; thus, the offerors were treated the same. See Electrophysics Corp., B-258674, Feb. 13, 1995, 95-1 CPD ¶ 63. KFMC argues that the specification requires the acids to be "removed," not merely neutralized. There is no basis for reading the RFP so restrictively. Although the RFP labels the requirement "Acid Removal," the requirement goes on to state that the unit "shall produce recycled antifreeze with acidity levels as follows[.]" Further, KFMC itself concedes that the substances are no longer in "acid form" after neutralization. As ENPRO's proposal shows that its unit eliminates the acids, the agency reasonably determined that it meets the requirement.

KFMC maintains that ENPRO's unit cannot remove particulate/solids in accordance with the American Society for Testing Materials (ASTM) D-4656, as required; it asserts that ENPRO test data show inconsistent performance in this regard. This argument is without merit. The lab tests (performed in April 1992) contained in ENPRO's proposal show that ENPRO's unit produced recycled antifreeze with metal solids within the allowed maximums for solids stated in Table 3 of ASTM D-4656. The agency therefore reasonably concluded that ENPRO's unit meets the requirement.¹

¹KFMC alleges that ENPRO's proposal does not show that its unit can "bring used antifreeze back up to ASTM D-4656 standard." This requirement was deleted by amendment 0002, prior to the closing date. Also, KFMC claims that ENPRO's proposal lacks test data for chlorides and foam testing, and approval by General Motors (GM) for ENPRO's unit to recycle coolants for GM automobiles. However, the performance specification contains no requirements regarding chlorides, foam testing, or GM approval. These arguments therefore are without merit.

In an October 11 submission, KFMC asserts that ENPRO's proposal fails to show how its unit meets the requirement for a power cord with a ground fault interrupter, or how the unit complies with the UL 508 safety standards specified in the RFP. Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties be filed not later than 10 calendar days after the basis of protest was or should have been known to the protester, whichever is earlier. Section 21.2(a)(2), 61 Fed. Reg. 39,039, 39,043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)); Paging Network of Washington, Inc., B-274052, Aug. 13, 1996, 96-2 CPD ¶ 63. KFMC was furnished ENPRO's proposal with the agency report on September 13. Thus, these arguments, which concern the contents of the proposal, had to be raised no later than September 23. As KFMC did not raise them until October 11, they are untimely and will not be considered.

LOGISTICS REQUIREMENTS

The RFP required that an offeror submit with its proposal two copies of an operation and maintenance manual which was to discuss the logistics requirements in the RFP and how the offeror intended to meet them. The RFP provided that this information (or some similar explanation from the offeror) would be used to determine technical acceptability.

KFMC maintains that ENPRO's proposal was unacceptable because it did not include a copy of its operation and maintenance manual or indicate how ENPRO intended to meet the logistics requirements. KFMC also argues that the absence of this information should have led the agency to question whether ENPRO intended to meet the requirements, given ENPRO's insertion of "NSP" (not separately priced) for the 14 logistics support subitems on the price schedule, and the low price of ENPRO's unit.

The logistic support items required and included, among other things, a recommended spare parts list, a technical manual, supplemental provisioning documentation, and a support equipment illustration. The agency points out that ENPRO provided a videotape with its proposal which demonstrated how to assemble and operate a similar model, provided an illustration of a similar unit, and provided a list with parts and support materials. The agency concedes that ENPRO did not provide any other logistics documentation with its proposal, but the company indicated in its proposal its intent to provide operating instructions and the other requirements. In addition, the technical evaluators—a mechanical engineer and an engineering technician—were familiar with the operating manual provided with another similar ENPRO unit in operation at NAWC, Lakehurst. The Navy concluded that the information available was sufficient to show that ENPRO has the capability to provide the required logistics data.

The agency's conclusion was reasonable. The RFP's Contract Data Requirements List (CDRL) contains extensive information as to what is required of the contractor and how the contractor is to perform the logistics support requirements. Thus, although the RFP required offerors to explain how they intended to meet the requirements, the RFP actually left little to clarify about the matter. In this regard, we note that, while KFMC provided the required response, it consisted of four pages which largely recited back the requirements for each logistics support requirement. In any case, to the extent that the agency relaxed the logistics data requirement for ENPRO without advising KFMC of the relaxation, KFMC suffered no competitive prejudice. Even if the relaxation would have led KFMC to omit the logistics data from its proposal, KFMC does not allege, and there is no evidence or reason to believe, that this would have resulted in cost savings that would have enabled KFMC to reduce its price below ENPRO's. See Laser Diode, Inc., B-249990, Dec. 29, 1992, 93-1 CPD ¶ 18. Contrary to KFMC's assertion, the fact that ENPRO chose not to separately price the logistics support items does not support a conclusion that they do not intend to provide the required data. We have held that an NSP notation only indicates the bidder's affirmative intent to obligate itself to provide the item at no charge to the government and should not be a basis for rejecting the bid. See Urethane Prods. Corp., B-234694, May 25, 1989, 89-1 CPD ¶ 508; AUL Instruments, Inc., B-220228, Sept. 27, 1985, 85-2 CPD ¶ 351.

EVALUATOR QUALIFICATIONS

KFMC argues that the technical evaluators lacked the necessary background in chemistry to adequately evaluate the technical information in ENPRO's proposal. The selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; our Office will decline to appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on the part of the evaluators, none of which has been alleged in this case. AmerInd, Inc., B-253751, Oct. 19, 1993, 93-2 CPD ¶ 240.

The protest is denied.

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