

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Export 220Volt, Inc.

File: B-412303.2

Date: January 20, 2016

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Suresh Saraswat, for Asian European Electronics & Appliances, an intervenor.
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GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of awardee's technical proposal is sustained where the awardee failed to comply with the solicitation's stated evaluation criterion that required offerors to provide product literature to substantiate the acceptability of their proposed products.

DECISION

Export 220Volt, Inc., of Houston, Texas, protests the award of a contract to Asian European Electronics & Appliances (AEEA), of Northridge, California, under request for proposals (RFP) No. SGE500-15-R-0145, issued by the Department of State, Regional Procurement Support Office (Germany), for portable, step-down transformers. Export 220Volt argues that the agency's evaluation of AEEA's proposal and the resulting award decision were improper.

We sustain the protest.

BACKGROUND

The solicitation,¹ issued on September 21, 2015, as a commercial item acquisition, contemplated the award of a fixed-price contract for portable, step-down

¹ The record demonstrates that the solicitation is not a model of clarity. For example, the solicitation states that it is issued as an RFP (RFP at 1), while the corresponding FedBizOpps notice states that the procurement is being conducted
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transformers.² The RFP contained three contract line item numbers (CLIN) for the different types and quantities of transformers (e.g., CLIN 0001 was for a quantity of 500, 1,000 watt transformers). However, common to all transformers were technical requirements as follows:

Single phase heavy gauge steel casing with fuse; Pilot Lamp; 1.8 [meter] cord with European three-prong SCHUKO plug (two prong with earthing clips, plus female contact to accept the third prong/earthing pin from sockets which have this prong); secondary one U-Blade grounded receptacle; [Underwriter Laboratories] UL, [Canadian Standards Association] CSA, or [Technischer Überwachungs-Verein] TUV listed / certified components; and polarity warning light (for auto-transformers) all required. Electrically isolated step-down transformers meeting the above will also be acceptable to meet the requirement for a polarity warning light indicator.

RFP, Attachment A.

The RFP established that contract award would be made on a best-value basis (i.e., “most advantageous to the Government”), based on three evaluation factors: pricing and delivery; technical capability; and past performance. RFP at 26. The nonprice factors, when combined, were equal in importance to price. Id. Relevant to the protest here, the technical capability factor stated that:

Offerors shall provide with their proposal confirmation that the proposed item meets the entire specifications as provided in Attachment ‘A’ of this solicitation. Offerors shall provide with their proposal, at a minimum, existing product literature to substantiate the

(...continued)

as an invitation for bids. Agency Report (AR), Tab 2, FedBizOpps Notice, Sept. 22, 2015, at 1. Likewise, the terms contract, purchase order, offeror, vendor, proposal, and bid are all used on various occasions. For the sake of consistency, and because the distinction has no bearing on our analysis in this protest, we use the terms RFP, proposals, offerors, and contract.

² Our Office did not issue a protective order in connection with this protest because Export 220Volt elected not to retain counsel eligible for admission under a protective order. In resolving the protest, we reviewed unredacted copies of the proposal and evaluation documents in camera, and we have based our decision on the full record. Because some of the information contained in the agency report consists of source selection sensitive and proprietary information regarding the awardee, Export 220Volt was furnished with a redacted version of the report. For the same reason, our discussion of the evaluation here is also necessarily limited.

acceptability of their offered products . . . in accordance with this solicitation.

Id.

The RFP also stated that “[t]o have a [proposal] considered for award, all [offerors] must provide manufacturer name, model, and extended specifications of the exact equipment being proposed for all line items. No exceptions. Failure to provide this information will result in a ‘non-responsive’ [offer] and removal from award consideration.” Id.

The State Department utilized the services of the third-party reverse auction provider FedBid, Inc., to conduct the procurement.³ See AR, Tab 2, FedBizOpps Notice, Sept. 22, 2015, at 2. Nine offerors, including AEEA and Export 220Volt, submitted proposals by the September 28 closing date. AEEA’s proposal consisted of the offeror’s pricing; a FedBid compliance checklist; certifications and representations; a picture of a transformer; the manufacturer name and models of the items proposed (e.g., Sunkax ST-1000); and “seller bid specifications.” AR, Tab 6, AEEA Proposal, at 1-23. Specifically, beneath the RFP technical requirements, AEEA provided a narrative of what it stated were the specifications for each of the items it was proposing. Id. at 4-5. AEEA’s proposal, however, did not contain any product literature from the manufacturer or third party substantiating the acceptability of its offered products, nor did it include any product specifications other than those which AEEA itself had prepared.

FedBid determined that AEEA was the lowest-priced offeror (\$71,469), and that Export 220Volt was the second-lowest-priced offeror (\$71,567). AR, Tab 8, FedBid Summary List, Sept. 28, 2015. The record contains no documentation regarding how the contracting agency, or FedBid, evaluated AEEA’s proposal under the technical capability and past performance factors. On September 30 (2 days after closing), the agency made contract award to AEEA as the lowest-priced offeror.⁴

³ Offerors were required to submit their prices using the FedBid online exchange, and the nonprice information (e.g., technical proposals, representations and certifications) by email to FedBid. AR, Tab 2, FedBizOpps Notice, Sept. 22, 2015, at 2.

⁴ The RFP stated that contract award would be made “to the responsible offeror whose proposal, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered.” RFP at 26. The agency made the award to AEEA on a lowest-priced, technically acceptable basis. See AR, Nov. 13, 2015, at 3 (the agency “made award to AEEA as the lowest[-]priced offeror whose offered products were represented to meet or exceed all of the solicitation requirements”); Contracting Officer’s Statement, Nov. 13, 2015, at 5 (Contract . . . was issued to AEEA as the lowest-priced technically acceptable offeror . . .).

The State Department provided Export 220Volt with notice of contract award on October 6, and a debriefing on October 14. This protest followed.

DISCUSSION

Export 220Volt challenges the agency's evaluation of AEEA's proposal. The protester contends that AEEA's products fail to comply with the RFP's technical requirements in certain essential regards: (1) that they lack a one U-Blade USA grounded receptacle; (2) that the universal receptacles are not UL, CSA, or TUV listed; and (3) that AEEA proposed a basic auto-transformer without a polarity warning light.⁵ Export 220Volt also contends that the agency failed to conduct its evaluation in accordance with the solicitation, insofar as the RFP required offerors to submit extended specifications and product literature to substantiate compliance, and AEEA submitted only its own representations regarding the alleged features of the proposed products.

The agency argues that its technical evaluation was reasonable because AEEA's proposal represented on its face that it met all specifications, including those which the protester challenges, and took no exception to any RFP requirements. The agency asserts that it reasonably relied on AEEA's representations when finding the awardee to be technically acceptable.⁶

AEEA, the awardee, argues that its proposed products meet all RFP requirements, and it provided (in response to the protest) a "Sunkax Technical Sheet" whereby AEEA re-listed the purported product specifications. AEEA Comments, Nov. 23, 2015, Technical Sheet, at 1. AEEA also states that the picture enclosed with its proposal--which the protester contends demonstrates a noncompliant product--was the manufacturer's standard picture, and that the transformers are "custom design[ed] and provided as per buyer's requirement." AEEA Comments, Nov. 23, 2015, at 1.

It is a fundamental principle that a contracting agency must evaluate proposals consistent with the terms of the solicitation and, while the evaluation of offerors' proposals generally is a matter within the procuring agency's discretion, our Office will question an agency's evaluation where it is unreasonable, inconsistent with the solicitation's stated evaluation criteria, or undocumented. Tantus Techs., Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 6; Exelis Sys. Corp.,

⁵ The protester bases these assertions in large part on the transformer picture which AEEA submitted with its proposal, and which the agency provided to Export 220Volt as part of the post-award debriefing.

⁶ After Export 200Volt filed its protest, the agency requested that AEEA confirm that its proposed products met the RFP requirements, which the awardee did. AR, Tab 12, Email from Contracting Office to AEEA and Reply, (Oct. 14-15, 2015), at 1-2.

B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 5. Further, it is well-established that contracting agencies do not have the discretion to announce in the solicitation that they will use one evaluation plan, and then follow another. The Emergence Group, B-404844.7, Feb. 29, 2012, 2012 CPD ¶ 133 at 7. Once offerors are informed of the criteria against which proposals will be evaluated, the agency must adhere to those criteria in evaluating proposals and making its award decision, or inform all offerors of any significant changes made in the evaluation scheme. Id.; Tantus Techs., Inc., supra, at 7. Because the record evidences that the agency did not adhere to the announced evaluation scheme in evaluating AEEA's technical capability, we conclude that the agency's technical capability evaluation of AEEA's proposal was unreasonable and improper.

As set forth above, the RFP required each offeror's proposal to provide "at a minimum, existing product literature to substantiate the acceptability of [its] offered products . . . in accordance with th[e] solicitation." RFP at 26. Quite simply, the RFP established that for this procurement, an offeror's self-representations that its proposed products met all technical requirements would be inadequate. The record reflects that AEEA's proposal failed to include the information required by the RFP. Even if it could be argued that AEEA's self-prepared "seller bid specifications" met the requirement for extended specifications, it is clear that AEEA failed to provide existing product literature from the manufacturer or third-party source substantiating the acceptability of its offered products. AR, Tab 6, AEEA Proposal, at 1-23. Nor did the picture which AEEA submitted make up for the lack of product literature: the picture does not by itself establish a compliant product; moreover, AEEA acknowledges that the picture is of a generic, Sunkax transformer that does not represent what it intends to deliver. Therefore, we find the State Department's technical evaluation to be unreasonable because AEEA failed to submit with its proposal the information which the solicitation mandated that offerors provide.⁷

The State Department does not argue that AEEA submitted the required product literature substantiating the acceptability of their proposed products. Rather, the agency contends that the step-down transformers are a common commercial item, and that AEEA self-representations that its products would comply with all technical

⁷ The record does not reflect that either the State Department or FedBid ever considered whether AEEA submitted the product literature information required by the RFP. Rather, the record reflects that the agency's technical evaluation was limited to whether the offeror had self-represented that it met or exceeded the required product specifications. In addition, as noted above, the record contains no documentation regarding how the contracting agency, or FedBid, evaluated AEEA's proposal under the technical capability and past performance factors. Nonetheless, because the protester does not challenge this aspect of the agency's evaluation, our decision to sustain this protest is limited to AEEA's failure to provide product literature to substantiate the acceptability of its proposal.

requirements were sufficient. We disagree. While AEEA's proposal represented that its offered transformer met all of the specifications, such blanket statements of compliance or an offeror's belief that its products will meet the agency's needs are not sufficient where the solicitation requires the offeror to provide product literature to demonstrate that its offered item complies with the specifications listed in the solicitation. See Sea Box, Inc., B-405711.2, Mar. 19, 2012, 2012 CPD ¶ 116 at 5. In sum, the agency's argument, that it could rely upon AEEA's self-representations of compliance, has no merit because the solicitation here required AEEA to also provide product literature to substantiate the acceptability of its proposed products, and AEEA failed to do so.

RECOMMENDATION

We recommend that the agency reevaluate AEEA's proposal in accordance with the stated evaluation criteria and make a new source selection decision. If AEEA's proposal is determined to be ineligible for award, the agency should terminate AEEA's contract and make award to the offeror that is "most advantageous to the government, all factors considered." RFP at 26. We also recommend that Export 220Volt be reimbursed the costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1). Export 220Volt should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. Id., § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel