



## Decision

**Matter of:** ThermoAir Spray Booths

**File:** B-411358

**Date:** July 2, 2015

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Sean Oliver, for the protester.  
Captain Kelly L. Sledgister, Department of the Army, for the agency.  
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's rejection of the protester's quotation for failing to provide required technical literature is denied where the record shows that the protester failed to include required technical literature, as well as other material information.

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### DECISION

ThermoAir Spray Booths of Sun Valley, California, a small business, protests the elimination of its quotation from award consideration under request for quotations (RFQ) No. W911KF-15-Q-0011, issued by the Department of the Army, Army Materiel Command, for four spray/bake booths at the Anniston Army Depot. The protester maintains that the agency unreasonably eliminated its quotation from consideration because it failed to include required technical literature.

We deny the protest.

### BACKGROUND

The RFQ was issued on January 8, 2015, under the commercial item provisions of Federal Acquisition Regulation (FAR) part 12, as a small business set-aside.<sup>1</sup> The

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<sup>1</sup> Although the solicitation was an RFQ, the evaluation record and the agency's response to the protest refers to both "offerors" and "proposals" as well as to "vendors" and "quotations." Because the distinction between a quotation and a

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solicitation anticipated the award of a fixed-price contract to provide four spray/bake booths.<sup>2</sup> The solicitation contemplated award on a best value basis, considering the following three factors: (1) technical, (2) past performance and (3) price. The technical factor had the following subfactors: (1) materials used for construction of spray/bake booths, including ductwork, (2) paint application equipment bill of materials, (3) safety circuit (hardware and software design for direct fired burner), and (4) design/control of modulating re-circulated air to exhaust during flash-off cycle. RFQ at 38. The technical factor was to be evaluated on a met/not-met basis, and, for purposes of award, past performance “[was] slightly more ‘important’” than price.<sup>3</sup> Id. at 39.

As relevant here, vendors were instructed to include technical literature in their quotations, as follows:

Proposals shall include catalogue pictures, drawings, literature, specifications, installation data and additional information, as applicable, to completely describe the system and its controls, instrumentation, performance, installation, warranty details and training procedures proposed to meet the requirements of this specification.

Id. at 34.

The RFQ included a related provision which stated that the technical literature must “show that the proposed equipment meets the requirements of the specification,” and the technical subfactors. RFQ at 60. This provision stated as follows:

(b) The features [technical subfactors] required above to be shown in the technical literature are necessary to determine the offeror’s technical acceptance. If the offeror’s preprinted literature does not show all these features, the offeror may attach a letter or supplemental information to the literature describing those required

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proposal has no bearing on our analysis in the protest, references herein are considered interchangeable.

<sup>2</sup> These four booths are to be used for paint and special coating application for components of the combat vehicles that are being overhauled at the Anniston Army Depot. Contracting Officer Statement at 2.

<sup>3</sup> Vendors’ past performance was to receive one of the following adjectival ratings: neutral, poor, good or excellent. RFQ at 39. The agency was also to assign a past performance risk rating of unknown, very high, low, or very low risk. Id.

features. All literature and supplemental information shall be in US Customary System of Measurements and in the English language.

(c) The failure of technical literature to show that the product offered conforms to the requirements of this solicitation may require rejection of the offer.

Id. at 60. The agency received eight quotations from seven vendors (one vendor submitted two quotations), including ThermoAir, by the February 27, amended due date for quotations.<sup>4</sup> Contracting Officer Statement at 5. One quotation was determined to be nonresponsive and excluded from further consideration. Id.

The Army conducted written discussions with the vendors, including the protester. With respect to ThermoAir's quotation, the agency raised 11 items for clarification and correction, including information on 3 subsystems: a backup air compressor, a burner, and a monorail with hoist. AR, Tab E.1, Agency Discussion Letter with ThermoAir (Mar. 17, 2015). Of relevance to this protest, the agency stated the following regarding the backup air compressor:

There is no specific information included with your offer. The comment "Comply" added to our statement of work (SOW) meets FAR Clause 52.212-2 in Addendum (b)(8)(a) but does not "completely describe the system" as required by Addendum (b)(8)(b).

Id. at 2.

ThermoAir responded with additional information regarding 2 of the 11 items identified in the discussions questions, which concerned 2 of the 3 subsystems identified by the agency. AR, Tab E.2, ThermoAir Post-Negotiation Submission. Specifically, ThermoAir provided a Make-up Air Engineering manual for a burner specified in the SOW and an Industrial Lifting Equipment brochure for the monorail 5-ton hoists also specified in the SOW. Id. The protester did not address the backup air compressor.

The Army noted that ThermoAir's quotation provided a copy of the SOW, and included the comment "Comply" on a copy of the SOW at paragraph 1.4, which concerned the compressor. AR, Tab H, ThermoAir Technical Evaluation, at 2. The agency concluded that this comment failed to provide the required details concerning the compressor. Id.; Tab G, Agency Award Determination (Mar. 30, 2015), at 3; Contracting Officer Statement at 6.

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<sup>4</sup> The protester's proposal was submitted as "Filternet DBA Thermoair Spraybooths."

In addition to the concerns regarding the compressor, the Army also noted that the information ThermoAir provided during discussions regarding the two subsystems failed to explain how they would be installed into the primary system. AR, Tab H, ThermoAir Technical Evaluation, at 2; Tab G, Agency Award Determination (Mar. 30, 2015), at 3. Additionally, the agency concluded that it lacked information to resolve other questions raised during discussions, including whether the protester was aware of the latest update to the SOW, and whether the quotation included the warranty. AR, Tab E.1, Agency Discussion Letter with ThermoAir (Mar. 17, 2015). The agency notified ThermoAir that it considered its quotation to be technically unacceptable. AR, Tab E.4, Pre-award Notice to ThermoAir (Apr. 2, 2015).

The Army selected the quotation submitted by AHR Metals for award, at a price of \$1,554,970. AR, Tab G, Agency Award Determination (Mar. 30, 2015), at 5.<sup>5</sup> This protest followed.

## DISCUSSION

ThermoAir argues that the Army unreasonably rejected its quotation as unacceptable. The protester contends that it provided the agency all of the information required to establish that its quotation was acceptable, including specific information concerning the backup air compressor. The protester also argues that the agency was biased against the awardee. For the reasons discussed below, we find no merit to the protest.

The evaluation of an offeror's or vendor's proposal or quotation is matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals or quotations, our Office will not reevaluate the proposals or quotations, but will instead examine the record to determine whether the agency's judgments are reasonable and consistent with the solicitation's evaluation factors and applicable statutes and regulations, as well as whether the agency has treated offerors or vendors equally in its evaluation. Brican Inc., B-402602, June 17, 2010, 2010 CPD ¶ 141 at 4.

As explained above, although the Army requested information from ThermoAir during discussions regarding 11 items, the protester only provided information for 2 of those items. The agency states that for one of the areas not addressed by the

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<sup>5</sup> ThermoAir does not raise any challenges regarding the evaluation of the awardee. Additionally, although ThermoAir does not address this issue, the protester's proposed price was lower than the awardee's. AR, AR, Tab G, Agency Award Determination (Mar. 30, 2015), at 3, 5.

protester, the backup air compressor, ThermoAir failed to provide the required technical literature. AR, Tab H, ThermoAir Technical Evaluation, at 2; Tab G, Agency Award Determination (Mar. 30, 2015), at 3. The agency explains that the compressor is an integral and necessary part of the system, and that the protester's failure to respond to this matter during discussions prevented the evaluators from finding that the protester's quotation was acceptable. Contracting Officer Statement at 6.

ThermoAir contends that it provided information regarding the backup compressor, including the required technical literature. Protester's Comments at 1. The Army states, however, that it conducted a thorough search of its records, but that its digital records did not contain any documents from the protester concerning the compressor. Contracting Officer Statement at 7. The protester has not provided any evidence or information to contradict the agency's representation.<sup>6</sup>

ThermoAir also argues that while it did not explain how its proposed backup air compressor works, "it should be rudimentary." Comments (May 4, 2015). ThermoAir maintains that the agency unreasonably required the protester to "explain every detail of every part of everything." Protest at 1. Although the protester argues, in effect, that vendors should not have been required to provide detailed information regarding the compressors, we conclude that the terms of the RFQ, which required such literature, were clear. In this regard, as discussed above, the RFQ unequivocally required the submission of technical literature with a firm's quotation. See RFQ at 34, 60. On this record, we conclude that the Army reasonably rejected the protester's quotation.

Finally, ThermoAir alleges that the Army was biased against the protester. Protest at 1 ("It's clear that someone [at the agency] has an agenda to award the contract to [a different vendor].") Protester's Comments (May 4, 2015), at 2. Our Bid Protest Regulations require that a protest must include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11. With regard to allegations of bias or bad faith on the part of contracting officials, our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. See, e.g., Operational Support & Servs., B-299660.2, Sept. 24, 2007, 2007 CPD ¶ 182 at 3.

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<sup>6</sup> Additionally, the protester does not specifically dispute the Army's contention that the protester failed to respond to the other nine items identified in the discussions letter.

Here, ThermoAir appears to argue, at best, that the Army's requirement that vendors provide all information required under the solicitation is evidence of bias, as the required information should have been "evident." Protest at 1. The protester's allegation fails to meet the high standard for demonstrating that an agency's actions were tainted by bias. See International Garment Processors, B-299674 et al., July 17, 2007, 2007 CPD ¶ 130 at 4-5 n.6.

The protest is denied.

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General Counsel