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Decision

Matter of: AlterG, Inc.

File: B-419936

Date: September 16, 2021

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DIGEST

1. Protest that the agency unreasonably evaluated quotations is denied where the record shows the agency evaluated quotations reasonably, and in accordance with the terms of the solicitation.
 2. Protest that the solicitation contained a latent ambiguity is denied where the contemporaneous record shows that the protester read the terms of the solicitation in the same manner as the agency.
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DECISION

AlterG, Inc., a small business of Fremont, California, protests the award of a contract to Woodway USA, Inc., a small business of Waukesha, Wisconsin, under request for quotations (RFQ) No. FA441721QC079, issued by the Department of the Air Force for a brand name or equal Woodway Boost Anti-Gravity Treadmill and brand name or equal Woodway running shorts. AlterG contends that the agency unreasonably evaluated quotations and that the solicitation contains a latent ambiguity.

We deny the protest.

BACKGROUND

The RFQ, issued on May 27, 2021, as a combined synopsis solicitation for commercial items, contemplated the award of a fixed-price contract for one brand name or equal Woodway Boost Anti-Gravity Treadmill in accordance with a set of requirement characteristics set forth in the solicitation, as well as several pairs of brand name or

equal Woodway running shorts in various sizes. Agency Report (AR), Tab 2, RFQ at 1, 3, 28. The acquisition, set aside for small businesses, was conducted in accordance with Federal Acquisition Regulations (FAR) parts 12 and 13. *Id.*

Award was to be made to the lowest-priced, technically acceptable (LPTA) quotation. *Id.* at 3. The contracting officer would evaluate “equal” products against the requirement characteristics on the basis of information furnished by the vendor or reasonably available. *Id.* In this regard, the RFQ stated that product information such as literature or the references to the manufacturer’s website shall be submitted for all equivalent items. *Id.* at 2. Vendors who did not provide product information with their quotations could be eliminated from consideration for award. *Id.* at 3. The solicitation’s list of requirement characteristics included the following characteristic relevant here: “Minimum running surface dimension of 22”W x 68”L.” *Id.* at 28.

The agency received six quotations on June 4, including those of AlterG and Woodway. AR, Tab 13, Price Evaluation and Award Determination at 1; RFQ at 1. Woodway quoted the brand name item at a price of \$32,675. AR, Tab 8, Woodway’s Quotation at 1. AlterG quoted what it called an equivalent product, the AlterG Pro 100 Anti-Gravity Treadmill (AR, Tab 4, AlterG’s Quotation at 29) for a total price of \$26,390. AR, Tab 13, Price Evaluation and Award Determination at 1. AlterG’s quotation stated that the product met the RFQ’s minimum requirements, including the minimum running surface dimension, but did not include product information supporting the claim. Memorandum of Law and Contracting Officer’s Statement (MOL/COS) at 3. AlterG’s quotation was evaluated first because it was the lowest-priced quotation received. AR, Tab 13, Price Evaluation and Award Determination at 1.

On June 7, the contracting officer and AlterG had several email exchanges. The contracting officer asked AlterG for the user manual for the Pro 100 treadmill, which the firm provided. AR, Tab 6, Email from Agency to AlterG, June 7, 2021, 2:19 p.m.; AR, Tab 6, Email from AlterG to Agency, June 7, 2021, 4:38 p.m. The contracting officer then asked the firm to clarify a discrepancy between its quotation and the user manual; that is, AlterG’s quotation stated that the running surface of the Pro 100 was 22 inches wide by 68 inches long, but the user manual stated that the running surface was 22 inches wide by 62 inches long. AR, Tab 6, Email from Agency to AlterG, June 7, 2021, 6:01 p.m. AlterG responded that the total length of the Pro 100 is 68 inches and the actual running surface is 62 inches. AR, Tab 6, Email from AlterG to Agency, June 7, 2021, 6:02 p.m. On June 8, the contracting officer advised AlterG that its quotation could not be considered for award because it did not meet the minimum running surface requirement of 22 inches wide by 68 inches long. AR, Tab 6, Email from Agency to AlterG, June 8, 2021, 9:40 a.m.

The agency then evaluated Woodway’s quotation, which proposed the brand name Boost Anti-Gravity Woodway Treadmill and provided supporting product literature. AR, Tab 13, Price Evaluation and Award Determination at 1; MOL at 5. Woodway’s quotation was found technically acceptable and the agency made award to the firm for \$32,675. *Id.* On June 11, AlterG asked for a debriefing. MOL/COS at 5. On June 16,

AlterG received an unsuccessful offeror letter which the agency advised served as a debriefing, explaining that its quotation was technically unacceptable because the Pro 100's running surface was not 68 inches long. This protest followed.

DISCUSSION

AlterG argues that the agency unreasonably evaluated quotations and that the solicitation contains a latent ambiguity.¹

Evaluation

AlterG argues that the agency improperly found its quotation technically unacceptable for failure to meet the required minimum running surface dimension because there were no evaluation factors that established the requirements of acceptability. Protest at 5. Therefore, AlterG argues that it should have received award as the lowest-priced, technically acceptable quotation.

In reviewing protests of agency evaluations, we review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. *Ricoh America's Corp.*, B-402239, Feb. 22, 2010, 2010 CPD ¶ 55 at 2. Under 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. *Nas/Corp-Telmah, Inc.*, B-405893, Jan. 10, 2012, 2012 CPD ¶ 88 at 3. If the firm fails to do so, its product is properly rejected as nonconforming. *Id.*

The RFQ solicited a treadmill “[in accordance with]” the solicitation’s requirement characteristics. RFQ at 1. The solicitation states that quotations would be determined technically acceptable if all brand name or equivalent product requirements were quoted, and that the contracting officer would evaluate “equal” products--again, “in accordance with” the requirement characteristics--on the basis of information provided by the vendor or identified in the quotation. *Id.* at 3, 1. Therefore the protester’s argument that there were no requirements of acceptability is belied by the record, and we deny this protest ground. *Nas/Corp-Telmah, Inc.*, *supra*.

¹ AlterG also argues that the agency treated quotations unequally by engaging in unequal discussions because the agency took “Woodway at its word that it met the RFQ requirements,” and AlterG’s quotation was “unjustly scrutinized” regarding the running surface. Comments at 5. There is no evidence that the agency conducted discussions or clarifications with Woodway, let alone did so unequally. Instead, the record shows that Woodway provided product literature with its quotation confirming that it met the RFQ requirements, which the agency evaluated. As a result, this protest ground lacks a valid basis and must be dismissed. 4 C.F.R. §§ 21.1(c)(4), 21.5(f); *Red Heritage Medical, Inc.*, B-418934, Oct. 19, 2020, 2020 CPD ¶ 348 at 3.

As noted above, the user manual AlterG provided in response to the contracting officer's request stated that the running surface of the firm's treadmill was not 68 inches long, but rather 62 inches long. AR, Tab 5, AlterG Pro 100 User Manual at 35. In response to the contracting officer's specific request to clarify the discrepancy between the dimension in the user manual and the required dimension, AlterG stated that the total length of the treadmill was 68 inches long and the "actual running surface" is 62 inches. AR, Tab 6, Email from AlterG to Agency, June 7, 2021, 6:02 p.m. Since this dimension clearly did not meet the solicitation's requirement for the "minimum running surface dimension," as was required for a quotation to be acceptable, we have no basis to question the agency's evaluation. *LED Lighting Sols., LLC*, B-416127, May 9, 2018, 2018 CPD ¶ 172 at 3.

Latent Ambiguity

AlterG argues that the term "running surface" in the solicitation is latently ambiguous. Protest at 4-7; Comments at 6. The firm asserts it reasonably interpreted the 68 inch requirement to refer to the total length of the treadmill because the Pro 100 has the same treadmill track as the Woodway Boost and the Pro 100's total length is 68 inches. *Id.* Therefore, AlterG asserts that the running surface could refer to the entire length of the treadmill, the whole running belt, or just the surface that a person can run on. Comments at 6. AlterG also argues that regardless of what is measured as the running surface, the Pro 100 and Woodway Boost treadmills have the same 62 inch running surface dimensions because the Pro 100 uses the Woodway Boost treadmill track, and therefore, the Pro 100 should have been rated technically acceptable. *Id.* at 4-5. We are not persuaded by the protester's arguments.

Our decisions provide that an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Red Heritage Medical, Inc., supra* at 2. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Under our Bid Protest Regulations, a patent ambiguity must be protested prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); *Id.* Where a patent ambiguity in a solicitation is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the solicitation term. *Id.*

The record shows that AlterG was aware of the definition of "running surface." The firm's own user manual defines the "running surface" of its product as 62 inches long. AR, Tab 6, Email from AlterG to Agency, June 7, 2021, 4:38 p.m. After the discrepancy between the RFQ requirement and its own user manual was brought to its attention during the course of the competition, AlterG responded that the total length of the Pro 100 is 68 inches and the actual "running surface" is 62 inches. AR, Tab 6, Email from AlterG to Agency, June 7, 2021, 6:02 p.m. As a result, the contemporaneous record shows that the protester clearly knew the difference between a "running surface" and the total length of its product. If the dimensions of AlterG's treadmill and the brand name treadmill were the same, as AlterG argues, it should have been apparent to the

firm from the face of the solicitation that there was a discrepancy between what the solicitation called for as the running surface of the brand name treadmill, and the actual running surface of that treadmill. In this regard, the RFQ did not set forth a requirement for a total length of the treadmill but, rather, the running surface dimension. In light of the protester's own user manual and email, we see no basis to conclude there was a latent ambiguity in the solicitation. AR, Tab 5, AlterG Pro 100 User Manual at 35; AR, Tab 6, Email from AlterG to Agency, June 7, 2021, 6:02 p.m; *Red Heritage Medical, Inc., supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel