



Decision

Matter of: Standard Heater Tube, Inc.

File: B-403155

Date: September 24, 2010

David Morris for the protester.

Maj. Theodore T. Richard, and Maj. Elizabeth M.D. Pullin, Department of the Air Force, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that “brand name or equal” requirement in solicitation for heater tubes—used for aviation fuel testing—was overly restrictive is denied where record shows brand name or equal product was needed to ensure uniformity of heating tubes, which was necessary for valid testing results.

2. Protest challenging as overly restrictive solicitation requirement that heater tubes be tested under protocol established by national testing organization is denied where testing is required by military specifications and protester fails to establish that testing is not necessary to meet agency’s needs.

DECISION

Standard Heater Tube, Inc., of Boerne, Texas, protests the terms of request for quotations (RFQ) No. FA8601-10-Q-P001, issued by the Department of the Air Force for heater tubes and associated filter kits.¹ Standard asserts that the RFQ is unnecessarily restrictive in that it requires a “brand name or equal” product and requires that quoted equal products be tested for suitability under specifically defined procedures.

¹ The heater tubes are used in testing aviation fuel for thermal stability using the Jet Fuel Thermal Oxidation Tester (JFTOT), which subjects the test fuel to conditions that can be related to those occurring in gas turbine engine fuel systems. Contracting Officer’s (CO) Statement at 2-3.

We deny the protest.

BACKGROUND

The RFQ was posted on FedBizOpps on June 18, 2010, with a response date of July 10. The RFQ provides as follows:

These heater tubes shall be able to conduct thermal stability tests in accordance with the American Society for Testing and Materials (ASTM) D 3241 - Standard Test Method for Thermal Oxidation Stability of Aviation Turbine Fuels. Heater tubes shall be Alcor Part Number: AL-91652 or equal. Equivalent heater tubes shall comply with the characteristics outlined in the ASTM D 3241, Table 2. Heater tubes shall be established as conforming by the ASTM D02 Subcommittee on Aviation Fuels using the procedures outlined in the ASTM Research Report #D02-1550.

RFQ at 2. The RFQ advises that quotations “must clearly show that item offered meets all requirements.” RFQ at 3.

ASTM D 3241, referenced in the RFQ, provides a method for measuring the high temperature stability of gas turbine fuels and uses the JFTOT to subject the test fuel to conditions similar to those occurring in gas turbine engine fuel systems. AR, exh. 9, at 9-1.² The heater tube is a critical component of the JFTOT. *Id.* at 9-3. ASTM D 3241 provides that, because “jet fuel thermal oxidation stability is defined only in terms of this test method, which depends upon, and is inseparable from, the specific equipment used, the test method shall be conducted with the equipment used to develop the test method or the equivalent.” *Id.* at 9-2. Further, ASTM D 3241 specifically advises that ALCOR heater tubes (the brand name product here) were “used in the development of this test method,” but that a “test protocol to establish equivalence of heater tubes is on file at ASTM International Headquarters and may be obtained by requesting Research Report RR D02-1550.” *Id.* at 9-3, n. a,b.; *see* AR, exh. 10, ASTM Research Report # D02-1550.

DISCUSSION

Standard challenges the RFQ’s brand name or equal provision and the Research Report # D02-1550 (RR-1550) testing requirement on several grounds. Protest at 2. The determination of a contracting agency’s needs and the best method of

² ASTM refers to testing protocols established by ASTM International (formerly the American Society for Testing and Materials), which describes itself as “one of the largest voluntary standards development organizations in the world.” ASTM International Webpage, <http://www.astm.org/ABOUT/aboutASTM.html>; *see* Quantico Arms & Tactical Supply, Inc., B-400391, Sept. 19, 2008, 2008 CPD ¶ 173 at 2 n. 3.

accommodating them are matters primarily within the agency's discretion. Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3. We have considered all of Standard's arguments and find that they provide no basis to object to the RFQ. We address Standard's principal arguments below.

Brand Name Or Equal Requirement

Standard challenges the brand name or equal requirement in the RFQ, asserting that the ASTM documents themselves do not require that the acceptability of a quoted product be determined based on the characteristics of the ALCOR brand name product. Protest at 3-4; Comments at 13-14. Standard notes, in this regard, that, while ASTM D 3241 indicates that heater tubes manufactured by ALCOR were used in the development of the test method, this was not "an endorsement or certification by ASTM International." Protest at 3; AR, exh. 9, at 9-3, n. a. Standard asserts that "the raw material used by the two current viable manufacturers has an identical composition because it uniformly originates at precisely the same source and the exact same mill." Protest at 5. Standard concludes that the requirement is unduly restrictive.

The agency responds that the ALCOR heater tube is integral to the test procedure, noting that ASTM D 3241 specifically advises that the fuel test method "depends upon, and is inseparable from, the specific equipment used," and that "the test method shall be conducted with the equipment used to develop the test method or equivalent equipment." CO's Statement at 2-8; see AR, exh. 9, at 9-2. The "equipment used to develop the test method," as indicated above, included the ALCOR heater tube specified in the RFQ. AR, exh. 9, at 9-3. More specifically, the CO explains that the final result from the JFTOT thermal stability test under ASTM D 3241 is a heater tube color rating, which is based primarily on a visual observation; accordingly, the appearance of heater tubes must be equivalent at the onset of each test. CO's Statement at 2-8. The agency asserts that requiring ALCOR equivalency is necessary to ensure that the heater tube color rating is consistent across all tests, and that final results are not confused by the initial appearance or other characteristics of nonequivalent tubes. AR at 7.

We find the Air Force's position persuasive. First, we find nothing objectionable in the agency's reliance on the ASTM standard in determining the necessary characteristics of the required heating tubes. In this regard, we have held that it is plainly reasonable for an agency to attempt to comply with technical requirements that were specifically formulated for application in the procurement. 120 Church Street Assocs., B-232139, Nov. 21, 1988, 88-2 CPD ¶ 496 at 6-7; see, e.g., General Electrodynamics Corp., B-298698, B-298698.2, Nov. 27, 2006, 2006 CPD ¶ 180 at 6 (agency properly may rely on applicable industry standard to demonstrate reasonableness of requirements).

Contrary to Standard's assertion, the language of ASTM 3241, on its face, articulates the need to conduct testing using the same equipment used to establish the test

procedure, stating that the “test method . . . depends upon, and is inseparable from, the specific equipment used, [so] the test method shall be conducted with the equipment used to develop the test method” AR, exh. 9, at 9-2. It is undisputed in the record that the ALCOR heater tube specified in the RFQ was part of the equipment used to develop the test procedure in question. Further, the agency has sufficiently established that the brand name or equal provision is necessary to ensure the validity of the heater tube ratings, which are based on a visual comparison, and thus could be affected by the use of tubes with varying characteristics. Although Standard disagrees with the agency’s position in this regard—it asserts that color equivalency is “mythical,” Comments at 18—it has not shown that the agency’s judgment is unreasonable. See Richard Bowers & Co., B-400276, Sept. 12, 2008, 2008 CPD ¶ 171 at 2. We conclude that the brand name or equal requirement is unobjectionable.

Testing Requirement

Standard challenges the RFQ’s requirement for testing of “equal” products in accordance with RR-1550, as prescribed by ASTM D 3241, asserting that such testing is not required by ASTM D 3241, is not otherwise necessary, and therefore unduly restricts competition. Protest at 3. In this regard, Standard points out that RR-1550 itself includes a disclaimer on its cover page, indicating that it is not to be reproduced, circulated, or quoted “outside of ASTM International Committee/Society activities.” *Id.* Standard asserts that this indicates that RR-1550 is “only to be used in ASTM Subcommittee Activity,” which does not include a “solicitation through a Federal agency.” Protest at 3.

The establishment of testing procedures is a matter within the technical expertise of the procuring activity, and we will not object to the imposition of such a requirement unless it is shown to be without a reasonable basis. Essex Electro Engineers, Inc.; Alturdyne, B-259832, B-259832.2, May 3, 1995, 95-1 CPD ¶ 228 at 3.

We find that RR-1550 is a reasonable means of ensuring the acceptability of the required heater tubes. The agency asserts that use of ASTM D 3241 is prescribed by an applicable military standard—MIL-STD-3004B, Department of Defense Standard Practice, Quality Assurance/ Surveillance For Fuels, Lubricants and Related Products. CO’s Statement at 2-3; *see* AR, exh. 12. This standard describes ASTM D 3241 as “DoD adopted,” *id.* at 12-18, and provides that all “laboratory tests shall be conducted in accordance with the method prescribed in the specification covering the product.” *Id.* at 12-36. RR-1550 is specifically cited in ASTM D 3241 as “a test protocol to establish equivalence of heater tubes.” AR, exh. 9 at 9-3. No other test is cited in ASTM D 3241 and the protester identifies no alternative test.³

³ Standard claims that in 2002 it developed its own comprehensive heater tube equivalence test program. However, the test results under Standard’s program were
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The protester's assertion that the ASTM standards, by their own terms, are not intended for use by federal agencies is without merit. ASTM D 3241 specifically provides that it "has been approved for use by agencies of the Department of Defense." AR, exh. 9, at 9-1. Further, as the CO points out, RR-1550 explicitly provides that its purpose is to "establish the equivalency of heater tubes manufactured by another manufacturer with ALCOR heater tubes in ASTM D 3241." CO's Statement at 2-9, 2-10; see AR, exh. 10, at 10-2. In addition, the Air Force has provided a statement from an ASTM representative, advising that any entity, "whether or not a member of ASTM, can reference the requirements on any ASTM standard in a contract, bid, regulation, etc." AR, exh. 15, at 15.2. See generally M. C. & D. Capital Corp., B-225830, July 10, 1987, 87-2 CPD ¶ 32 at 5-6 (agency's use of ASTM standards was unobjectionable where agency reasonably justified their use).

Standard challenges the usefulness and efficacy of the RR-1550 test procedures, asserting, for example, that the specifications in ASTM D 3241 "already sufficiently define, specify, and restrict the quality required," and that, because the primary result of testing under ASTM D 3241 "is a color determination and not a statistic," the absence of a "meaningful (statistical) precision statement for D 3241 makes comparative performance testing problematic." Protest at 3; Comments at 10, 14-15.

As noted above, a contracting agency's responsibility for determining its needs includes determining the type and amount of testing necessary to ensure both product compliance with the specifications and that a particular product will meet the government's needs. Austin Telecomms. Elec., Inc., B-256251, May 31, 1994, 94-1 CPD ¶ 331 at 2. Here, the agency has amply demonstrated that the heater tubes are critical components of the JFTOT, that uniformity of the tubes is necessary to ensure valid test results, and that the RR-1550 testing protocol is a reasonable means of ensuring uniformity. See, e.g., AR at 2-3. Although Standard disagrees with the agency's position in this regard, it has not provided definitive information establishing that testing under RR-1550 does not serve its intended purpose or that the agency's judgment is otherwise unreasonable. See Richard Bowers & Co., supra. We thus find no basis to object to the RR-1550 testing requirement.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

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found "non-persuasive" by ASTM. Standard has not shown that ASTM's conclusions were unreasonable. See AR, exh. 5, at 5-4.