



## Decision

**Matter of:** Export 220Volt, Inc.

**File:** B-422216

**Date:** February 27, 2024

---

Paula K. Thakkar, Export 220Volt, Inc., for the protester.  
Trevor Davies, Esq., Department of the Navy, for the agency.  
Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

---

### DIGEST

Protest challenging the agency's source selection decision is denied where the agency's award decision was not inconsistent with the terms of the solicitation, and where the protester suffered no competitive prejudice.

---

### DECISION

Export 220Volt, Inc., of Houston, Texas, protests the issuance of a delivery order to Babco International, Inc., of Tucson, Arizona, under request for quotations (RFQ) No. N0040623R0055, issued by the Department of the Navy, Naval Supply Systems Command, for household appliances. The protester contends that the agency failed to evaluate quotations in accordance with the evaluation criteria.

We deny the protest.

### BACKGROUND

The Navy issued the RFQ on August 25, 2023, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4.<sup>1</sup> AR, Tab A, RFQ at 1; COS/MOL at 2. The

---

<sup>1</sup> Although the solicitation is listed as a request for proposals (RFP), and one part of the business clearance memorandum (BCM) notes that this procurement was conducted pursuant to the simplified acquisition procedures of FAR section 13.501, the agency asserts that the procurement was conducted pursuant to FAR subpart 8.4, using the General Services Administration's (GSA) e-Buy platform. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2, 9; see Agency Report (AR),

(continued...)

RFQ contemplated a fixed-price, brand name or equal, delivery order for household appliances, including washing machines, dryers, refrigerators, electrical ranges, and microwaves for military family housing at the Commander Fleet Activities Yokosuka (CFAY) naval installation in Japan. RFQ at 3, 5-6.

Award would be made to the quotation that represented the best value to the government with “price and other factors considered.” *Id.* at 3. The Navy received quotations from three vendors, including Export 220 and Babco. COS/MOL at 3. The agency found that Babco offered the lowest price of the three vendors, at \$227,915.00. AR, Tab B, BCM at 5; COS/MOL at 3. After evaluating Babco’s quotation as technically acceptable, the Navy evaluated Babco’s past performance as part of its responsibility determination and found that Babco represented the best value to the government. COS/MOL at 3; AR, Tab B, BCM at 5, 7-8. Based on the Navy’s findings that Babco was a responsible vendor with the lowest-priced, technically acceptable (LPTA) quotation, the agency issued the order to Babco. AR, Tab B, BCM at 10; COS/MOL at 3-4.

In an email from the agency on November 16, 2023, the protester learned that the Navy had issued the order to Babco, in part, because of Babco’s low price. Req. for Dismissal, Enclosures at 25. Export 220 filed a protest with our Office on November 21.

## DISCUSSION

The protester alleges that the agency’s source selection decision was inconsistent with the RFQ’s evaluation scheme. Specifically, Export 220 contends that the solicitation language required the agency to perform a best-value tradeoff, and instead, the Navy issued the order on an LPTA basis.<sup>2</sup> Protest at 2, 6. The agency responds that the

---

Tab B, BCM at 3 (“This Firm Fixed Price Contract was solicited Unrestricted on GSA eBuy utilizing . . . Subpart 8.4-Federal Supply Schedules.”). The GSA e-Buy system is an online RFQ tool designed to facilitate the submission of quotations for a wide variety of commercial goods and services under GSA schedules and technology contracts. *Bluewater Mgmt. Grp., LLC*, B-414785, Sep. 18, 2017, 2017 CPD ¶ 290 at 2 n.1.

<sup>2</sup> The protester also asserted that Babco did not have compliant cooking ranges listed on their GSA schedule in its protest to our Office. Protest at 3. Export 220 initially raised this same argument with the agency, arguing that the awardee’s quotation could not have been compliant with the specifications because, according to the protester, Babco did not have “radiant smooth top cooking ranges listed on their GSA Schedule.” Req. for Dismissal, Enclosures at 23 (Email from Protester to Agency, Sept. 20, 2023). The Navy denied the agency-level protest on November 8. *Id.* at 22. We dismissed this allegation as untimely, because the protester was required to protest this issue to GAO within 10 days of initial adverse agency action. Notice of Ruling on Req. for Dismissal, Dec. 6, 2023; see FAR 33.103(d)(4); 4 C.F.R. § 21.2(a)(3). Here, the initial adverse action was the Navy’s denial of the agency-level protest on November 8. Because Export 220 did not raise this allegation until it filed its protest with our Office on

(continued...)

solicitation did not require the Navy to perform a tradeoff analysis and that its source selection decision was reasonable. COS/MOL at 5.

## Best Value

As stated, Export 220 argues the RFQ required the agency to use a best-value tradeoff source selection methodology in making its award decision. In this regard, the parties disagree on whether the solicitation's basis of award required the agency to perform a best-value tradeoff in making award, or whether the agency was permitted to make award to the lowest-priced, technically acceptable quotation.

We note at the outset that the solicitation here does not contain a specific basis of award selection and is neither well drafted nor is it a model of clarity. See FAR 8.405-1(d)(2). For example, the RFQ provides that the government would issue the order to the vendor whose quotation represented the best value to the government, "price and other factors considered." RFQ at 3. Those "other factors," however, are not expressly stated anywhere in the solicitation. The entirety of the RFQ's basis for award is as follows:

Award will be made to the quote/offer that represents the best value to the Government. Note: the Government reserves the right to consider the past performance of all quotes/offers, conduct a price, past performance tradeoff, and award to other than the lowest price quote/offer. Note: the Government reserves the right to consider the delivery timeframe of all quotes/offers, conduct a delivery and price tradeoff, and award to other than the lowest price quote/offer. . . . Due to the interrelationship of supplies to be provided hereunder, the Government reserves the right to make a single award to the bidder whose quote is considered in the best interest of the government, price and other factors considered.

*Id.*

Where, as here, a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an

---

November 21--more than 10 days after initial adverse action--this argument is untimely. *Rotair Aerospace Corp.*, B-421381, B-421381.2, Apr. 19, 2023, 2023 CPD ¶ 99 at 8.

The agency, however, continued to correspond with the protester after the November 8 denial of the agency-level protest and, in an email sent by the agency on November 16, informed the protester that award had been made to Babco because its lowest-priced quotation was found to be technically acceptable--which formed the basis of this protest. *Id.* at 25. The protester first learned the basis of the source selection allegation forming the basis of the instant protest on November 16, and timely raised the allegation with our Office on November 21.

interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Kingfisher Sys.; Blue Glacier Mgmt. Grp., Inc.*, B-417149 *et al.*, Apr. 1, 2019, 2019 CPD ¶ 118 at 4.

Relevant here, the bulk of the agency's requirements is contained in the listed contract line item numbers (CLINs). Each CLIN identifies the requested appliance, the required quantity, and the specifications for the appliance.<sup>3</sup> The agency argues that the solicitation language--reserving the right to consider past performance or delivery timeframe, as well as the right to perform a price tradeoff--did not prohibit the Navy from using the LPTA source selection method.<sup>4</sup> COS/MOL at 6 n.3. We agree.

Our decisions have explained that when a solicitation indicates an agency "reserves the right" to engage in certain conduct, the decision to engage in that conduct is a matter of agency discretion. *See, e.g., MindPoint Grp., LLC*, B-418875.2; B-418875.4, Oct. 8, 2020, 2020 CPD ¶ 309 at 9 (finding agency was not required to perform a price realism analysis where solicitation noted agency "reserves the right" to perform that analysis); *International Ctr. for Language Studs., Inc.*, B-419737.3, Dec. 20, 2021, 2021 CPD ¶ 85 at 7 (finding because solicitation stated agency "reserves the right" to communicate with only the apparent successful vendor, agency was not required to do so). Although the RFQ allowed for the possibility of a best value tradeoff--by reserving the right--the decision to conduct a tradeoff was a matter of agency discretion, and not mandated by the terms of the solicitation.

---

<sup>3</sup> For example, the specifications provided for CLIN 4 state, in relevant part:

SUPPLIES/SERVICES	QUANTITY	UNIT
	100	Each
WASHING MACHINE, AUTOMATIC HOUSEHOLD FFP Dimensions (plus or minus 5 percent Tolerance for all) Width 25 and five-eighth inch Height 43 inch Depth 28 inch Voltage 110v-120v/50Hz/1Ph Capacity 3.5 Cu.ft. (plus or minus 5 percent Tolerance) Color WHITE FOB: Destination MILSTRIP: N6105423RCHD013		

RFQ at 9.

<sup>4</sup> While agencies *may* consider past performance or delivery terms when determining the best value for orders issued from the federal supply schedule, the FAR does not state that agencies must do so. FAR 8.405-1(f) (noting that in addition to price, the agency "may" consider other factors, including past performance and delivery).

Export 220 maintains that the RFQ's reference to a "best value" source selection obligated the agency to conduct a tradeoff. Comments at 1. The protester, however, misapplies the meaning of the term "best value" when used in federal government procurements. As defined by the FAR, "best value" simply means "the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement." FAR 2.101. Thus, an agency "can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches." FAR 15.101. In this regard, the FAR specifically identifies the LPTA source selection process as part of the "best value" continuum, describing the process to be appropriate when "best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price." FAR 15.101-2; *Sevatec, Inc. et al.*, B-413559.3 *et al.*, Jan. 11, 2017, 2017 CPD ¶ 3 at 5-6 (noting that the FAR provides for LPTA and tradeoff as "best-value" selection processes).

As noted above, the RFQ does not provide a specific basis of award. Reading the solicitation as a whole, however, we do not find unreasonable the agency's understanding that the Navy could issue an order to the lowest-priced, technically acceptable quotation. In addition to the basis of award advisement, there were other indications in the RFQ that award could be made on an LPTA basis. For example, the RFQ required vendors to quote items that met the specifications provided by each CLIN and to include unit and total pricing for the requested items. RFQ at 5, 7-9 (listing the specifications of the required items and stating that the agency "[w]ill not accept anything different than below specifications"). The solicitation also required the items to be delivered by a specific date, December 31, 2023. *Id.* at 5. Such requirements suggest that the agency issued the RFQ, anticipating an evaluation of whether a quotation met the requirements, and not how well it met the requirements.

Moreover, missing from the solicitation, notably, is the identification of any factor, other than price, that *must* be evaluated--not discretionary factors that *may* be evaluated--by the agency. In the same vein, the solicitation's silence regarding how any non-price factor would be evaluated essentially established a pass/fail standard for whether the quoted items met each CLIN's specifications. See *One Cmty. Auto, LLC*, B-419311, Dec. 16, 2020, 2020 CPD ¶ 405 at 4. Finally, though not dispositive, the absence of any description of the relative weights of factors or how evaluation factors would be graded (*e.g.*, adjectival ratings), supports the agency's position that the solicitation allowed for the use of an LPTA source selection method. Based on a review of the record, we find unreasonable the protester's interpretation that the solicitation only allowed for a best-value tradeoff source selection, and that the RFQ precluded the agency from using an LPTA selection methodology.<sup>5</sup> See *id.* Therefore, this allegation is denied.

---

<sup>5</sup> We note that since the solicitation does not contain a specific basis of award, there is some question on whether the agency properly solicited this requirement. See FAR 8.405-1. Notwithstanding this apparent discrepancy, the protester's challenge to the solicitation at this junction would be untimely. Our Bid Protest Regulations contain strict  
(continued...)

## LPTA Evaluation

Next, the protester questions whether the Navy even evaluated quotations consistent with the LPTA methodology that the agency asserts it used here. Specifically, Export 220 contends that the agency did not evaluate any quotations other than the one submitted by Babco. Comments at 2 (“There was no documented consideration of the technical merit of Export 220Volt’s proposed appliances, its excellent past performance, its ability to meet the required delivery schedule, or any other aspect of Export 220Volt’s quotation.”). We need not address this allegation because, as discussed below, the protester has not demonstrated how it was competitively prejudiced by the agency’s action.

Competitive prejudice is an essential element of a viable protest. *Citizant, Inc.; Steampunk, Inc.*, B-420660 *et al.*, July 13, 2022, 2022 CPD ¶ 181 at 18. Where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *IR Techs.*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 12.

Here, even if the agency was required, and failed, to review the protester’s quotation for technical compliance and acceptability before ranking vendors in order of lowest price, the record shows that the awardee’s quotation had been evaluated for technical acceptability and that Babco quoted the lowest price. The Navy asserts, and the record confirms, that the agency reviewed Babco’s quoted item specifications, delivery schedule, past performance, and price to find Babco the lowest-priced, technically acceptable quotation. COS/MOL at 4, AR, Tab B, BCM at 5, 7-8,10. Thus, even if the agency had reviewed Export 220’s past performance, delivery schedule, and specification compliance--and found it to be technically acceptable--such evaluation

---

rules for the timely submission of protests. They specifically require that a protest based on alleged improprieties in a solicitation that are apparent prior to bid opening be filed before that time. 4 C.F.R. § 21.2(a)(1). A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Megatech Corp.*, B-417582, June 25, 2019, 2019 CPD ¶ 225 at 3. A patent ambiguity must be protested prior to the closing time for the submission of responses to the solicitation, in order to be considered timely. 4 C.F.R. § 21.2(a)(1); *Megatech Corp.*, *supra*. An offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the due date for proposal submission. *Sterling Med. Assocs., Inc.*, B-419794, June 25, 2021, 2021 CPD ¶ 248 at 4.

Here, the lack of clarity regarding the basis for the award was a glaring problem with the terms of the solicitation. Thus, to be timely, the protester was required to protest this patent ambiguity before the due dates for submission of quotations. 4 C.F.R. § 21.2(a)(1).

would not change the fact that Babco submitted the lowest-priced, technically acceptable quotation. See AR, Tab B, BCM at 10. In other words, the protester's competitive standing would not have changed, because Babco's technically acceptable quotation would still have been selected for award over Export 220's higher-priced, technically acceptable quotation under an LPTA source selection method. *AllWorld Language Consultants, Inc.*, B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 13. As such, we find no basis here to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel