



Decision

Matter of: Automated Precision, Inc.

File: B-422063.2

Date: June 18, 2025

Adam Hicks, Automated Precision, Inc., for the protester.
Alan Grayson, Esq., for Hexagon Manufacturing Intelligence, Inc., the intervenor.
Bethany Hsu, Esq., and Daniel C. Carleton, Esq., Department of the Navy, for the agency.
Thomas J. Warren, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly rejected protester's proposal is denied where the protester failed to provide a certification required by solicitation provision implementing relevant Buy American requirements.
 2. Protester is not an interested party to challenge other aspects of agency's evaluation where the protester was not eligible for award as a result of submitting a technically unacceptable proposal.
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DECISION

Automated Precision, Inc. (API), a small business of Rockville, Maryland, protests the award of a contract to Hexagon Manufacturing Intelligence, Inc., of Kingstown, Rhode Island, under request for proposals (RFP) No. N68335-22-R-0163, issued by the Department of the Navy, Naval Air Systems Command, for laser trackers and associated component parts for the V-22 aircraft. The protester contends that the agency improperly rejected API's proposal for failing to meet solicitation requirements.

We deny the protest in part and dismiss it in part.

BACKGROUND

The procurement history for this requirement spans several years. The Navy first issued the solicitation on April 22, 2022, seeking commercially available off-the-shelf laser trackers capable of performing highly accurate three-dimensional measurements

for the V-22 aircraft. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2; Agency Report (AR), Tab 1, RFP at 5.¹ The solicitation was issued on an unrestricted basis and contemplated the award of a fixed-price contract. RFP at 1, 3. Award was to be made to the offeror submitting the lowest-priced, technically acceptable proposal. *Id.* at 3-4.

The solicitation identified numerous minimum technical requirements the proposed laser tracker product was required to meet to be considered acceptable. *Id.* at 5. As relevant here, the proposed laser tracker was required to meet a humidity requirement of "0 to 95 [percent] non-condensing." *Id.* The solicitation indicated that "[a]ll proposals will be evaluated for compliance with [the] terms, conditions and requirements set forth in the solicitation[.]" and "[a] technical proposal must be found to be acceptable in all areas to be considered technically acceptable and eligible for award." *Id.* at 4. The RFP further advised that a proposal with an unacceptable rating under the technical factor will result in the entire proposal being found unacceptable and eliminated from the competition. *Id.*

In addition, the solicitation incorporated by reference Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7001, "Buy American and Balance of Payments Program." RFP at 46. The clause implements the Buy American statute, 41 U.S.C. §§ 8301-8305 (formerly the Buy American Act, 41 U.S.C. §§ 10a-10d) and the Department of Defense Balance of Payments Program, by establishing a preference for domestic end products over foreign end products, except for foreign end products of certain qualifying countries. The solicitation also incorporated DFARS provision 252.225-7000, Buy American--Balance of Payments Program Certificate (Buy American certificate), which requires offerors to certify whether their proposed products are domestic end products from the United States, foreign end products from a qualifying country, or foreign end products from a non-qualifying country.² RFP at 46; DFARS provision 252.225-7000(c).

The agency received three timely proposals, including proposals from API and Hexagon. COS/MOL at 3. On September 27, 2023, the agency awarded the contract to Hexagon as the lowest-priced, technically acceptable offer. *Id.* API then filed a protest with our Office on October 4. After the agency notified our Office that the Navy intended to take corrective action by re-evaluating proposals, we dismissed API's

¹ Citations to the record are to the pages in the Adobe PDF documents, unless otherwise noted.

² Agencies may have accompanying evaluation obligations depending upon the certified origin of proposed end products. For example, if an end product is certified as a foreign end product, the agency must evaluate the proposal in accordance with part 225 of the DFARS, which instructs the agency to apply an evaluation factor of 50 percent to a proposal if the low-priced proposal is a foreign end product that is not otherwise exempt from the price evaluation factors under the Buy American or Balance of Payments Program. DFARS provision 252.225-7000(b)(1); see DFARS 225.502(c)(ii)(E).

protest as academic. *Automated Precision, Inc.*, B-422063 (unpublished decision); COS/MOL at 3-4.

On February 12, 2024, as part of the corrective action reevaluation, the agency determined that it had mistakenly identified API's proposal as technically acceptable. COS/MOL at 4. Consequently, the Navy opened discussions with all remaining offerors and requested additional information from API to confirm whether API's proposed laser tracker product conformed to solicitation requirements. AR, Tab 9, Feb. 23, Discussion Letter at 1. Specifically, the agency explained that the product brochure API included with its proposal listed the relative humidity as 10-95 percent, conflicting with the solicitation's minimum requirement of 0-95 percent. *Id.* The discussion letter also noted API's missing Buy American certificate and requested that API complete and submit the Buy American certificate, individually addressing each contract line item number (CLIN) identified in the solicitation. *Id.*; COS/MOL at 4.

In response, API submitted a letter to the Navy and attached an updated product brochure for the proposed Radian Plus model, explaining that API had included an outdated brochure with its initial proposal and noting the model's current specifications reflected the solicitation's required humidity figure of 0-95 percent. AR, Tab 11, API Revised Proposal, March 14 at 1, 4. API also submitted the required Buy American certificate where API certified the country of origin for its proposed end products. *Id.* at 7-9.

On July 24, the agency amended the solicitation to include the most recent versions of DFARS provision 252.225-7000 and DFARS clause 252.225-7001 and to identify all CLINs the agency considered "end products" for purposes of Buy American compliance and certification. AR, Tab 13, RFP Amendment 0004; COS/MOL at 5. As a result, the Navy opened a second round of discussions and requested that API update its Buy American certificate to conform with the amended solicitation. AR, Tab 14, July 24, Discussion Letter at 1. After API submitted its updated Buy American certificate, the Navy initiated a third round of discussions and requested that API correct errors the agency identified in API's Buy American certificate. AR, Tab 18, August 26, Discussion Letter at 1. On August 29, API submitted a corrected Buy American certificate to the Navy. AR, Tab 20, API August 29, Buy American Certificate; COS/MOL at 5.

On November 14, the agency notified offerors that discussions were closed and requested final proposal revisions, indicating that the Navy "intend[ed] to make award without any further discussions or obtaining further proposal revisions." AR, Tab 22, Request for Final Proposal Revision at 1. The agency also advised offerors that "[m]ajor revisions to your proposal are not anticipated; however, should you revise your proposal in any way, rationale for each revision must be provided in sufficient detail,

including substantiation, as a response to this [final proposal revision] letter.”³ *Id.*; COS/MOL at 5-6.

API submitted a timely final proposal revision, which substituted a new tracker model, the Integrated Laser Tracker (iLTx), in place of the Radian Plus model that API had proposed previously. AR, Tab 24, Final Proposal Revision at 2. API included updated pricing and an updated brochure detailing the iLTx product specifications. AR, Tab 24, Final Proposal Revision at 4. API did not, however, include an updated Buy American certificate for the new tracker model. COS/MOL at 6.

On March 21, 2025, the Navy concluded its evaluation, determining that the new product submitted by API, the iLTx laser tracker, was technically unacceptable because the specifications in the product brochure API submitted indicated 10-95 percent humidity, conflicting with the solicitation’s minimum 0-95 percent humidity requirement. AR, Tab 26, Source Selection Decision (SSD) at 2. The agency also rejected API’s proposal as noncompliant because API failed to submit a Buy American certificate for the new laser tracker. *Id.* at 3. The Navy then identified Hexagon as the responsible and technically acceptable offeror with the lowest price and recommended lifting the stop-work order on the contract previously awarded to Hexagon. *Id.* at 4; COS/MOL at 7-8.

After the agency notified API of the new selection decision and provided API with a debriefing, API filed this protest with our Office.

DISCUSSION

The protester contends the agency unreasonably evaluated API’s lower-priced proposal as technically unacceptable. Protest at 1-7. Specifically, API argues that the agency erred by rejecting API’s proposal for failing to submit the Buy American certification required by the solicitation and for not allowing API to remedy this “correctable oversight” through clarifications. *Id.* at 5-6. The protester also argues the agency should have allowed API to clarify and update the product specification information, as API was allowed to do following the submission of its initial proposal. *Id.* at 3. The protester further suggests that the Navy may have disparately evaluated proposals by relaxing the solicitation’s minimum relative humidity requirement for the awardee but not for API.⁴ *Id.* at 2-5. We have reviewed all of the protester’s arguments, and although we

³ The agency also notified API that it did not have any additional updates to its proposal, API “need not provide anything more than a letter stating that the proposal and responses provided during discussions constitute the [final proposal revision].” COS/MOL at 5.

⁴ API elected to proceed with its protest without counsel, and our Office did not issue a protective order for this protest. As such, our discussion of some aspects of the agency’s evaluation is, necessarily, general in nature to avoid reference to non-public information.

do not address every argument in this decision, we find no basis to sustain API's protest.⁵

Buy American Certificate

The protester argues that the agency unreasonably rejected API's final proposal revision for failing to certify whether API's proposed products were domestic end products from the United States, foreign end products from a qualifying country, or foreign end products from a non-qualifying country. Protest at 5-7. API argues that the Navy "neither requested [Buy American] compliance documentation with API's [final revised proposal] nor provided API with a form or opportunity to certify compliance[.]" *Id.* at 5. Relatedly, API contends that the solicitation failed to include the provision at Federal Acquisition Regulation (FAR) 52.225-2, Buy American Certificate, which "depriv[ed] API of a fair chance to demonstrate compliance." *Id.* at 6. API also asserts that because its proposed iLTx laser tracker is "unequivocally [a] domestic end product," the agency should have allowed API to submit a revised proposal or sought "clarifications for minor or clerical errors" if the agency required documentation confirming the iLTx laser tracker's Buy American compliance. *Id.*

As discussed below, these arguments are without merit.

As an initial matter, as the agency correctly notes, solicitations issued by Department of Defense agencies, such as the Navy here, must include DFARS provision 252.225-7000, instead of FAR provision 52.225-2. COS/MOL at 18; DFARS 225.1101(2)(i). As discussed above, DFARS provision 252.225-7000 was incorporated by reference into the solicitation; as a result, all offerors were notified of the requirement to certify their proposed products as domestic end products, qualifying country end products, or other foreign end products. See DFARS provision 252.225-7000(c). We see no error associated with the agency incorporating into the solicitation DFARS provision 252.225-7000, and not FAR provision 52.225-2.⁶

⁵ For example, several of API's allegations questioned the basis for the inclusion of certain solicitation requirements, such as the solicitation's 0-95 percent minimum humidity requirement. See Protest at 2-7. To the extent these arguments challenge the terms of the solicitation, such as the agency's decision to include the requirement at section 1.01(m) of the RFP concerning 0-95 percent relative humidity or the agency's decision to incorporate DFARS provision 252.225-7000, we find them to be untimely solicitation challenges that should have been raised prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1); *Vigor Marine LLC*, B-420955.2, Oct. 31, 2022, 2022 CPD ¶ 276 at 4.

⁶ At any rate, as noted above, API failed to challenge the terms of the solicitation, such as the incorporation of DFARS provision 252.225-7000, prior to the closing time for receipt of proposals; as a result, any such challenge is now untimely. 4 C.F.R. § 21.2(a)(1); *Vigor Marine LLC*, *supra* at 4.

Second, we find no merit to the argument that the agency was required to further notify API of its obligation to submit a current and correct Buy American certificate with its final proposal revision. Protest at 5-7. API initially proposed the Radian Plus laser tracker model. *Id.* at 1-3; COS/MOL at 4. After multiple rounds of discussion where the agency either specifically requested API's missing Buy American certificate or identified deficiencies contained therein, API elected to propose a new laser tracker product--the iLTx laser tracker--in its final proposal revision.⁷ Protest at 1-2; AR, Tab 24, API Final Revised Proposal at 2, 4. Under the terms of the solicitation and DFARS provision 252.225-7000(c), API was required to certify the country of origin for all proposed end products, including the iLTx laser tracker, or risk having its proposal rejected as non-compliant.⁸ We find unavailing any suggestion that the protester was not given sufficient notice of the need to submit Buy American certification of all end products identified in API's final proposal revision--particularly considering the agency's repeated discussions with the protester concerning API's missing or deficient Buy American certificates.

Further, we reject the protester's argument that because of the iLTx laser tracker's "indisputable domestic production," API should have been allowed to clarify the omission of API's Buy American certificate as a "minor or clerical error[]" without opening discussions. Protest at 6. As a general rule, clarifications are limited exchanges between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR 15.306(a)(2); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2-3 n.2. Agencies have broad discretion as to whether to seek clarifications from offerors, but offerors have no automatic right to clarifications regarding proposals--and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. *Alltech Engineering Corp.*, B-414002.2, Feb. 6, 2017, 2017 CPD ¶ 49 at 6.

Although API views its proposal's omission of the Buy American certificate to be minor or clerical, correction of this omission would have required the agency to conduct discussions to allow API to submit the certification required by DFARS provision 252.225-7000(c)--a material solicitation requirement the agency addressed with API on

⁷ In the context of an RFP, it is well established that the submission of a final proposal revision demonstrates an offeror's intent to modify or replace its initial offer, thus extinguishing an agency's ability to accept the earlier offer. *See, e.g., UNICA-BPA JV, LLC*, B-422580.3, Jan. 8, 2025, 2025 CPD ¶ 2 at 4.

⁸ As noted above, in solicitation amendment 0004 and in the second round of discussions with API the agency specifically identified the laser tracker CLIN as an "end product," as defined in DFARS clause 252.225-7001, requiring certification in accordance with DFARS provision 252.225-7000. *See* AR, Tab 13, Amendment 0004 at 2; *see also* COS/MOL at 5.

three prior occasions.⁹ *Cf. Highmark Medicare Servs., Inc., et al.*, B-401062.5 *et al.*, Oct. 29, 2010, 2010 CPD ¶ 285 at 11 (discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provide the offeror with an opportunity to revise or modify its proposal in some material respect). Nor are we persuaded by API's argument for the "indisputable domestic production" of the iLTx laser tracker as a basis for allowing clarification since the Buy American certificate is the manner in which offerors certify the country of origin for all proposed end products--and API failed to submit the required certification notifying the agency of that fact.

Finally, to the extent that API argues generally that the agency's rejection of its final proposal revision was unreasonable, we disagree. The solicitation indicated that "[a]ll proposals will be evaluated for compliance with [the] terms, conditions and requirements set forth in the solicitation" and that "[a] technical proposal must be found to be acceptable in all areas to be considered technically acceptable and eligible for award." RFP at 4. Under these circumstances, the agency reasonably rejected API's proposal for failing to include the required Buy American certification. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. *FitNet Purchasing Alliance*, B-410797, Feb. 12, 2015, 2015 CPD ¶ 78 at 4 (finding reasonable the agency's rejection of a vendor's quotation for failing to include a required Buy American certification). We see no basis to fault the agency for enforcing the very terms of the solicitation requirement, discussed repeatedly with API, after API submitted a proposal that again omitted the required Buy American certification.

Interested Party Dismissal

The protester also alleges the agency erred by assessing API's proposal as technically unacceptable for failing to meet the solicitation's minimum relative humidity requirement and by not allowing API to submit a revised proposal, as was previously permitted. See Protest at 1-3. API further submits that the agency may have engaged in disparate

⁹ We note that the agency was not obliged to reopen discussions to allow API to submit the correct Buy American certification. Discussions, when conducted, must identify proposal deficiencies and significant weaknesses that could be addressed to materially enhance the offeror's potential for receiving award. *Serco Inc.*, B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. However, agencies are not required to reopen discussions to afford offerors an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm's revised proposal. See, e.g., *MetalCraft Marine, Inc.*, B-410199, B-410199.2, Nov. 13, 2014, 2014 CPD ¶ 338 at 10. Moreover, the Navy here notified API that the agency "intend[ed] to make award without any further discussions or obtaining further proposal revisions." AR, Tab 22, Req. for Final Proposal Revision at 1. Since API failed to submit the required Buy American certificate with its final proposal revision, the agency had no obligation to reopen discussions with API and allow another opportunity for a final proposal revision.

evaluation treatment by relaxing the solicitation's minimum humidity requirement for Hexagon but not API. *Id.* at 3-4. We do not need to resolve these issues, however, because we find that API is not an interested party to pursue its remaining challenges since API's proposal fails to conform to a material solicitation requirement, rendering the proposal technically unacceptable and ineligible for award.¹⁰

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. 31 U.S.C. §§ 3551-3557. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). In the post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *CACI, Inc.-Fed.*, B-419499, Mar. 16, 2021, 2021 CPD ¶ 125 at 5. A protester is therefore not an interested party if it would not be eligible to receive a contract award were its protest allegations sustained. *Win Aviation, Inc.*, B-422037, B-422037.2, Dec. 21, 2023, 2024 CPD ¶ 12 at 6. In a negotiated procurement, such as this one, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *PAE Applied Techs., LLC*, B-419133, Nov. 4, 2020, 2020 CPD ¶ 363 at 4.

Here, even if API were to prevail on its challenges to the agency's evaluation of the solicitation's minimum relative humidity requirement, the protester would not be next in line for award. In this regard, as noted above, we find the agency reasonably rejected API's proposal for omitting the required Buy American certificate from its final proposal revision. *See FitNet Purchasing Alliance, supra* at 4. We note further that the Navy received a second technically acceptable proposal in response to the RFP. AR, Tab 26, SSD at 2-3. Where there are intervening offerors who would be in line for award even if

¹⁰ Even if we were to consider these allegations, however, we see no reason to question the agency's evaluation of API's proposal as technically unacceptable and no evidence of disparate treatment. As noted above, the agency initially determined that API's proposed Radian Plus model did not meet the solicitation's humidity level requirement of 0-95 percent. COS/MOL at 4-6. After the Navy identified the express conflict between the product specifications included in API's initial proposal and the solicitation's humidity requirement, API submitted an updated brochure showing a humidity level of 0-95 percent for the Radian Plus model. AR, Tab 11, API Revised Proposal, March 14 at 4. When API submitted its final proposal revision, however, API included a product brochure for a new product (the iLTx laser tracker) showing a relative humidity level at 10-95 percent, which the agency again noted conflicted with the solicitation's minimum relative humidity requirement of 0-95 percent. AR, Tab 26, SSD at 2; COS/MOL at 6. In contrast, the product specifications included in Hexagon's proposal were consistent with other aspects of Hexagon's technical proposal affirming compliance with the solicitation's humidity percentage requirements, *see* AR, Tab 3, Hexagon Proposal at 6, 166, and, unlike API's proposal, Hexagon's proposal did not include product specifications in direct conflict with the solicitation's humidity percentage requirement.

the protester's challenges were sustained, we generally consider the protester's interest to be too remote to qualify as an interested party. See, e.g., *HCR Constr., Inc.*; *Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 6-7 n.6. Accordingly, we conclude that API is not an interested party for purposes of challenging the agency's evaluation of the technical proposals submitted by API and Hexagon.

The protest is denied in part and dismissed in part.

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General Counsel