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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Guildline Instruments Inc.

File: B-409924.2

Date: January 13, 2015

Richard Timmons for the protester.
Michael R. Frisz, for Measurements International Inc., the intervenor.
Maj. Carlos M. De Dios, Department of the Air Force, for the agency.
Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly found awardee's product to be technically acceptable because the agency failed to test the product is denied where solicitation indicated that comprehensive testing would be performed on production units delivered under the contract rather than on the product samples, and where the agency's evaluation of the product sample, and the conclusion that the product is acceptable, has not been shown to be unreasonable.

DECISION

Guildline Instruments Inc., of Ontario, Canada, protests the Department of the Air Force's award of a contract to Measurements International Inc. (MI), of Ontario, Canada, under request for quotations (RFQ) No. FA2263-14-Q-0002, for the supply of teraohmmeters. Guildline asserts that the agency failed to conduct tests of the product sample units in accordance with the terms of the RFQ.

We deny the protest.

BACKGROUND

A teraohmmeter is a device for precisely measuring electrical high resistance values. The solicitation contemplated the award of a fixed-price contract, with a base year and three option years, for up to 75 teraohmmeters, to be purchased in accordance with Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items, using simplified acquisition procedures. RFQ at 1-2. Award was to be made to the offeror submitting the lowest-priced, technically acceptable

proposal. RFQ at 3.¹ Technical acceptability was to be determined solely on the content and merit of the information submitted in response to the RFQ. Id.

The solicitation required the submission by offerors of a “product sample unit,” which “should be a commercial unit,” that was “as close to the proposed unit as possible.” RFQ at 3. While the solicitation advised offerors that the product sample unit would “undergo evaluation to ensure that it meets all of the requirements of the purchase description,” id., the solicitation also provided for the submission of product samples that might be subsequently modified, prior to the contractor’s submission of production units, in order to comply with all of the requirements of the solicitation’s purchase description. Specifically, the solicitation further provided that offerors were required to “[p]rovide detailed information on how the product sample unit will be modified to meet the technical requirements,” and that “[i]tems delivered under any resulting contract must conform to the approved product sample or approved product sample with proposed modifications.” Id.

Guildline and MI submitted the only two proposals with product sample units. Contracting Officer’s Statement of Facts (COSF) at 4. When the agency subsequently made award to MI, Guildline protested to this Office. The agency then took corrective action, and we dismissed the protest. B-409924, July 3, 2014. As part of its corrective action, the agency reevaluated both proposals. The contracting officer reports that the electrical engineer responsible for the reevaluation examined each proposal line by line to confirm that it addressed each requirement of the solicitation’s purchase description. COSF at 5. The engineer also tested three performance characteristics of the teraohmmeters: the voltage, the 1-year measurement uncertainty, and the short term stability. Id. After the initial reevaluation, the agency found both proposals to be technically unacceptable. Agency Report (AR), Exh. 30, MI Technical Evaluation Checklist, Aug. 8, 2014; AR, Exh. 31, Guildline Technical Evaluation Checklist, Aug. 9, 2014.

Subsequently, after a round of clarifications followed by discussions, both proposals were found to be technically acceptable. See AR, Exhs. 39 & 40, Technical Evaluations. Award was then made to MI based on its lower evaluated price of \$742,500. AR, Exh. 47, MI Revised Pricing. This protest followed.

DISCUSSION

Guildline asserts that the agency’s evaluation of product samples was both incomplete and otherwise unreasonable. In reviewing a protest challenging an agency’s technical evaluation, our Office will not reevaluate quotations; rather, we

¹ Although the solicitation is an RFQ, throughout the record the parties use the term “offeror” to refer to the vendors competing for award and “proposal” to refer to the offerors’ responses to the RFQ. We adopt the terms “offeror” and “proposal”; the distinction between a quotation and proposal is not relevant to our analysis.

will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

We have considered all of Guildline's arguments and find that none warrant questioning the selection of MI for award. We discuss the protester's principal arguments below.

Extent of Testing

Guildline asserts that the agency's evaluation failed to conform to the solicitation testing requirements in that the agency did not test the product samples' compliance with all of the purchase description's performance requirements. The agency responds that the solicitation required the testing not of the product sample units, but instead of the actual production units under the contract. Where 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 interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. Here, our review of the record, as explained below, leads us to conclude that the agency's reading of the solicitation was the only reasonable interpretation.

As noted by the protester, the purchase description mandates extensive testing of the teraohmmeters, providing as follows:

11.0 **TESTING:** This item shall be tested and inspected at a destination specified elsewhere in this contract. The item will be checked with test equipment with parameters equal to or better than those required to assure specified performance requirements are met. . . . Tests shall be performed to assure the item meets the requirements of paragraph 2.0-11.0 of this purchase description. Such testing at the destination does not relieve the contractor of performing all inspections and quality checks at the point of fabrication, as specified elsewhere in this contract, or as necessary to assure performance as specified herein. In addition to all elements of this purchase description, all commercially available components provided with this system must, as a minimum, satisfy their commercially published performance specifications (and must be provided by the contractor).

Purchase Description ¶ 11.

It is clear from the solicitation, however, that the above testing requirements were applicable to the units to be provided under the contract rather than to the unit furnished with the proposal as a product sample. In this regard, we recognize a meaningful distinction between solicitation requirements imposed on a “contractor” versus an “offeror.” See Alpha Genesis, Inc., B-299859, Sept. 12, 2007, 2007 CPD ¶ 167 at 11 (noting that a solicitation requirement pertaining to “the contractor” necessarily arises after contract award). Here, in describing the testing requirement, the purchase description provided that “[t]his item shall be tested and inspected at a destination specified elsewhere in this contract,” and that “[s]uch testing at the destination does not relieve the contractor of performing all inspections and quality checks at the point of fabrication.” Purchase Description ¶ 11. In our view, the references to testing “at a destination specified elsewhere in this contract,” and to destination testing in relation to the obligations of the “contractor,” clearly refer to the required testing of production units to be furnished under the contract rather than to the product sample units to be furnished by the offeror for purposes of the source selection. Further, this interpretation is consistent with the solicitation provisions permitting offerors to furnish product samples that need to be “be modified to meet the technical requirements.” RFQ at 3. Certainly, the value of the extensive testing required under Paragraph 11 of the purchase description would be undercut if the teraohmmeters being tested were product samples which might need to be subsequently modified to meet the purchase description performance requirements which were the subject of the tests.

Moreover, Guildline’s proposal appears to reflect an understanding that it was the production units that the agency would subject to the extensive testing required under the RFQ. In its proposal, Guildline identified four modifications it would make to its “Product Sample” prior to delivering the “Production” unit, AR, Exh. 15, Guildline Proposal at 4-5, and acknowledged that the unit “will be inspected and accepted by the customer at the destination as specified in any resultant contract . . . with test equipment equal to or better than those required to [ensure] that the specified performance requirements are met.” AR, Exh. 15, Guildline Proposal at 27; see Northrop Grumman Space and Missile Sys. Corp.; Textron Marine & Land Sys. Corp., B-400837 et al., Feb. 17, 2009, 2009 CPD ¶ 52 at 10 (the integrity of the protest process does not permit a protester to assume one position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper). In sum, Guildline has pointed to nothing in the solicitation which required more extensive testing of the product samples than was performed by the agency.

Testing of Guildline’s Sample

After reviewing the agency’s contemporaneous record of the testing of the three characteristics of the product samples during the evaluation process, Guildline has identified a number of purported discrepancies in the test results for the Guildline product sample. According to the protester, the “reported

measured resistance values [for the Guildline teraohmmeter] are impossible to achieve given the Agency's stated testing process," and overall the test results indicate a "Flawed Testing Process." Guildline Comments, Dec. 23, 2014, at 5.

Although, as discussed, the solicitation did not require the agency to conduct comprehensive tests of the product sample units, the agency nonetheless did perform some tests. When a contracting agency undertakes an analysis, even when discretionary, the conclusions drawn from the analysis must be reasonable. See DAV Prime, Inc., B-311420, May 1, 2008, 2008 CPD ¶ 90 at 2. However, competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain the protest. Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 7; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, the solicitation provided for award on a lowest-priced, technically acceptable basis, RFQ at 3, and Guildline's proposal was reasonably found to be technically acceptable notwithstanding any of the claimed deficiencies in the agency's testing.

Guildline asserts that it nevertheless could have been prejudiced by the agency's flawed testing of product samples; according to the protester, "[i]f the Agency's evaluation of the Awardee's offering was equally flawed, the Awardee may have been determined in error to have met the Solicitation requirements." Guildline Comments, Dec. 23, 2014, at 28. The agency, however, contemporaneously documented the successful testing of MI's product sample. AR, Exh. 33, MI Reevaluation Product Sample Testing Results; see AR, Exh. 34, Teraohmmeter Testing Explanation. Guildline has made no showing that MI's product sample in fact was noncompliant with the required performance characteristics tested by the agency during proposal evaluation. Indeed, Guildline has not even shown that MI's commercial teraohmmeters, which were required to be the basis of the unit proposed here, could not meet these tested performance characteristics. In these circumstances, the protester's mere speculation is insufficient to overcome the agency's contemporaneous documentation of the successful testing of MI's product sample and to make the required showing of prejudice as a result of the alleged flaws in the testing.

Safety Evaluation

Guildline also asserts that the agency failed to perform an adequate safety evaluation of MI's proposed unit. In this regard, Guildline alleges that MI's teraohmmeter lacked a fan filter and had unmarked terminals. In addition, according to the protester, MI's teraohmmeter was characterized by shoddy workmanship, such as misaligned panels and display.

Guildline's argument is without merit. With respect to safety, the purchase description advised offerors that the "design, materials and manufacture of the Teraohmmeter shall follow the best commercial safety standards and practices to ensure that it is safe for the operator and maintenance personnel throughout the life of the equipment." Purchase Description ¶ 6. As noted by the agency, however, the solicitation did not specify the extent and nature of the safety evaluation that the agency would perform on the product samples. Additional Agency Brief at 3. Nor was there any specific requirement that the teraohmmeter include a fan filter. Id.; Declaration of Agency Electrical Engineer, Dec. 16, 2014, at 9-10. Indeed, in this regard, the agency agrees with MI's position that the fan in its teraohmmeter did not require a filter for safe operation because it is used to blow (hot) air out of the unit (for cooling purposes) and not into the unit, and the high voltage circuitry inside the unit is enclosed and thus protected against dust and debris. COSF at 29; MI Response to Protest, Oct. 23, 2014, at 1. Guildline has not shown this position to be unreasonable.

Furthermore, the agency states that the sample units were subjected to extended performance in laboratory use, without incident, from July 15 through August 11, 2014, for up to eight hours a day, at voltages up to 1,000 volts, without being powered down. The agency reports that no issues of overheating were observed under these laboratory conditions; no safety issues were raised; and no safety precautions were required, except those normal in any high voltage testing environment. COSF at 29; Declaration of Agency Electrical Engineer, Dec. 16, 2014, at 8.

In addition, the record indicates that Guildline's claims of missing external markings on, and shoddy workmanship of, MI's teraohmmeter are based on an MI unit that Guildline saw at a trade show in March 2014. Protest at 5. The agency, however, having reviewed Guildline's photographs of the MI unit it saw at the trade show, confirms MI's position that the teraohmmeter MI submitted as a product sample was not the same as the teraohmmeter in Guildline's photographs. Declaration of Agency Electrical Engineer, Dec. 16, 2014, at 13; MI Comments, December 22, 2014 at 1-2. Further, the agency electrical engineer who inspected the product samples reports that he saw no examples of poor workmanship that could cause a safety issue. Id. at 8. Given that Guildline's claims in this regard are based upon its alleged inspection of a unit other than the one furnished as a product sample here, and that Guildline's pictures of the trade show unit are of poor quality and reveal little relevant detail, we see no basis to question the agency's position in this regard. In any case, again, the product sample was not required to be the final, compliant unit to be furnished under the contract, but instead was to be only "as close to the proposed unit as possible." RFQ at 3. In these

circumstances, we find no basis to question the agency's conclusion that MI's proposal was technically acceptable.

The protest is denied.

Susan A. Poling
General Counsel