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Decision

Matter of: Oransi, LLC

File: B-412061

Date: December 2, 2015

Stephen A. Aguilar, Esq., and Richard Ressler, Esq., Moster, Wynne & Ressler, P.C., for the protester.

Morgan L. Cosby, Esq., and Tudo N. Pham, Esq., Department of State, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the record shows that the agency reasonably evaluated the awardee's lowest-priced quotation as technically acceptable, and where the award was thus reasonable and consistent with criteria in the solicitation.

DECISION

Oransi, LLC, of Austin, Texas, protests the award of a contract to Export 220Volt Inc., of Houston Texas, under an unnumbered request for quotations (RFQ) issued by the Department of State (DOS) for 450 air purifiers and 350 replacement filters for the United States Embassy in Beijing, China.¹ Oransi argues that the awardee's air purifier does not meet the solicitation requirements, that the awardee will not deliver the items in its quotation, and that the awardee's pricing is improper.

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

¹ An earlier solicitation for the same requirement was issued by the Beijing embassy's general services officer as RFQ No. SGE500-15-Q-0025. Upon recognizing that the winning quotation had exceeded his purchasing authority, the general services officer canceled that solicitation and transferred the requirement to a contracting officer at the regional procurement support office in Frankfurt, Germany, who issued the RFQ at issue in this protest in the form of an e-mail. Agency Report (AR) at 2 n.2.

BACKGROUND

The contracting officer issued the RFQ as an e-mail to selected firms including Oransi and Export 220Volt, seeking quotations to supply air purifiers and replacement filters. The RFQ e-mail stated that award would be made to the firm that submitted the lowest-priced quotation for a product that met or exceeded the specifications. RFQ E-mail at 1.

Accordingly, the RFQ included a set of minimum requirements, including the following:

- “AHAM Verified” (www.aham.org) Clean Air Delivery Rate of at least 300 for tobacco smoke.²
- 220V

* * *
- Units with multiple filters must require only one type of filter. . . .

* * *
- If it has a built-in ionization function, it must meet ozone emission standards as set by the U.S. Food and Drug Administration of < 0.050 parts per million through tests outlined in UL [Underwriters Laboratories] Standard 867 Section 37.1.20.

RFQ E-mail, specifications attach., at 1.

The contracting officer received eight quotations from six vendors, including quotations from both Oransi and Export 220Volt. Contracting Officer's Statement at 1. Oransi's quotation offered a choice of two models, the lower-priced of which was its Oransi Erik Air Purifier EJ120. Supplemental AR, exh. 4, Oransi Quotation, at 12.³ As specified in the RFQ, Oransi quoted prices for the air purifiers, replacement filters, shipping, and any applicable value-added tax (VAT), which resulted in a total price of \$208,450. *Id.*

Export 220Volt's quotation proposed to supply the "Blueair 503" model air purifier. AR, Tab 4, Export 220Volt Quotation, at 1. Export 220Volt also provided prices for

² AHAM refers to the Association of Home Appliance Manufacturers, which administers an “AHAM Verifide” air cleaner certification program. See generally Protest exh. I.1, AHAM Verifide Air Cleaner Certification Program Procedural Guide (version 3.0). The record in this protest typically uses the conventional spelling, “verified.” Also, in simple terms, the clean air delivery rate measures clean air in cubic feet per minute. *Id.* at 2.

³ The second (higher-priced) air purifier model in Oransi's quotation is not relevant to our decision.

its air purifier, replacement filters, shipping, and VAT, for a total price of \$207,700. Id. at 1.

As relevant to the protest issues, the Export 220Volt quotation stated that the proposed air purifier model was “AHAM Verified,” had a clean air delivery rate of 375 for tobacco smoke, operated on 220v power, and met the specific ozone emission requirement. Id. at 2. The quotation also referred to Blueair product literature, which provided more information about the air purifiers and filters. Id.

With respect to the filters, the product brochure described two types: a “particle filter” and a “SmokeStop filter.” Id. at 27. The particle filter was described as an available choice to remove dust, pollen, other airborne particles, while the SmokeStop filter was described as an enhanced filter both to remove airborne particles and “to purify the air of gaseous pollutants such as tobacco smoke.” Id.

The DOS evaluators concluded that Export 220Volt’s quotation met all requirements, and therefore, was technically acceptable.⁴ AR Tab 3, Technical Evaluation Report, at 2. On August 11, the contracting officer awarded the contract to Export 220Volt because its technically acceptable quotation offered the lowest price. Contracting Officer’s Statement at 2. On August 31, the contracting officer informed Oransi of the award, and responded to the firm’s request for additional information about the Blueair 503 that Export 220Volt had offered. Id. This protest followed.

ANALYSIS

Oransi challenges several aspects of Export 220Volt’s quotation. We consider each, and as explained below, we find that none of the challenges have merit.

First, Oransi argues that the air purifier that Export 220Volt is actually going to deliver will not conform to the firm’s quotation. Protest at 2. This challenge raises a matter of contract administration; that is, whether the awardee’s performance will meet the contract requirements. As provided in our Bid Protest Regulations, our Office’s jurisdiction over challenges to the award of contracts does not include

⁴ Although the evaluation of Oransi was redacted from the agency report, the DOS does not appear to dispute the protester’s claim that its quotation was also evaluated as technically acceptable. However, in a supplemental agency report, the DOS argued that Oransi’s product could have been evaluated as unacceptable. Supplemental AR at 4. This argument was first made in response to Oransi’s challenge to whether Export 220Volt’s product required multiple types of filters, and the DOS has not identified a basis for it in the contemporaneous record. Our Office accords little or no weight to evaluation conclusions reached by an agency after a protest has been filed; that is, in the heat of litigation. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

deciding matters of contract administration. 4 C.F.R. § 21.5(a). Accordingly, we dismiss this ground of protest.

Next, Oransi argues that the “price of [the] winning bid is suspect.” Protest at 2. Oransi bases this claim on the fact that its price was slightly higher than the awardee’s price, and the fact that, as mentioned above, the original RFQ was canceled when the quotations exceeded the authority of the Beijing embassy’s general services officer. *Id.* at 3. Oransi then requests that our Office investigate the handling of its quotation, and speculates that the awardee may have been permitted to submit a late quotation.⁵ *Id.* We will not question agency action on the basis of mere speculation.⁶ See *Ervin & Assocs., Inc.*, B-279161 *et al.*, Apr. 20, 1998, 98-1 CPD ¶ 115 at 5; *VSE Corp.--Recon. & Costs*, B-258204.3, B-258204.4, Dec. 28, 1994, 94-2 CPD ¶ 260 at 2. Accordingly, we dismiss this ground of protest.

Oransi then argues that Export 220Volt’s quotation did not meet the RFQ requirement that the air purifier have an “AHAM Verifide” certification, and the requirement that the air purifier require only one type of filter. Protest at 1-2; Protester’s Comments at 7. Oransi argues that the DOS should have searched the AHAM internet website, and in so doing, would have found no listing for a 220v version of the Blueair 503 air purifier. Protest at 2.

The DOS argues that the procurement was conducted as a simplified acquisition of commercial items, and that it properly evaluated Export 220Volt’s quotation. In particular, the agency responds that the Export 220Volt quotation stated, in multiple places, that the Blueair 503 model air purifier had the required certification (including displaying an “AHAM CERTIFIED” medallion logo), and that the evaluation was thus properly based on the clear representations made by Export 220Volt in the quotation. AR at 5 (citing AR, Tab 4, Export 200Volt Quotation at 2-3). The agency argues that the RFQ provided for the evaluation to be based on the quotations, and did not require independent research by the agency. The DOS argues that its evaluators had no reason to doubt the statements in Export 220Volt’s quotation.⁷

⁵ In an e-mail to the Beijing embassy general services officer, sent shortly before filing this protest at our Office, Oransi acknowledged that it was “not sure if that [proximity in prices] is a coincidence or something else.” Protest exh. H, E-mail from Oransi to Beijing Embassy General Services Officer (Sept. 1, 2015), at 1.

⁶ Additionally, we note that the contracting officer’s statement confirms that Export 220Volt’s quotation was submitted on time, and that the date on the quotation is consistent with timely submission. Contracting Officer’s Statement at 1; Agency Report, Tab 4, Export 220Volt Quotation, at 1.

⁷ After contract award, when Oransi first questioned whether the 110v version of the Blueair product was the only one with AHAM certification, the general services
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With respect to Oransi's argument that the Blueair air purifier requires multiple types of filters, the DOS argues that Oransi's argument is based on an incorrect inference from a single page taken out of context. The agency argues that Export 220Volt's quotation represented that only one type of filter was needed, and that at least one of the agency's evaluators knew from the embassy's previous purchases of air purifiers from several manufacturers that the Blueair model required only one type of filter. Supplemental AR, exh. 1, Declaration of Technical Evaluator, at 2. Thus, even though the Blueair product literature quoted by Oransi discusses both a particle filter and a "SmokeStop" filter, the agency understood from other portions of the quotation and descriptive literature that the two filter types were alternatives; both types of filters would not be installed simultaneously. Supplemental AR at 2-3.

The role of this Office, where a protest challenges an agency's technical evaluation, is to review the evaluation record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Rome Research Corp., B-291162, Nov. 20, 2002, 2002 CPD ¶ 209 at 4. A protester's disagreement with an agency's judgments, without more, does not mean that the evaluation was unreasonable. Id.

In our view, the contemporaneous record supports the DOS evaluation of the Blueair product as acceptable under the challenged requirements.⁸ Export 220Volt's quotation stated that the firm would supply the Blueair 503 air purifier that was configured to run on the Chinese electrical system and represented that its item had

(...continued)

officer in the Beijing embassy contacted AHAM, and spoke to a senior engineer in the AHAM standards and verification program directly. Declaration of Beijing Embassy General Services Officer, at 1. The general services officer explains that the senior engineer explained the AHAM certification program, and confirmed that the 220v version of the Blueair air purifier had been certified by AHAM. Id. at 2. The general services officer then conveyed that information to the contracting officer in Frankfurt. Id.

⁸ In its comments on the agency report, Oransi raises several additional speculative challenges that lack factual support. For example, the record reflects that the DOS evaluators found the Export 220Volt quotation was acceptable under a specific ozone emission standard, but Oransi argues that the evaluators failed to "check[] this requirement with the specificity that was required," because the evaluators did not reiterate each aspect of the ozone standard in the evaluation. Protester's Comments at 4. However, despite its counsel obtaining access to the awardee's quotation under the terms of our protective order, Oransi fails to demonstrate a factual basis to claim that Export 220Volt's quotation was actually unacceptable under the requirement. Oransi has failed to show factual support for each of these evaluation challenges, so we will not consider them further. See 4 C.F.R. § 21.5(f).

received the required AHAM certification. Accordingly it was reasonable for the DOS evaluators to find the quotation acceptable under the AHAM certification requirement. Although the descriptive literature referenced in the quotation discussed two types of filters, the DOS reasonably concluded that the quotation proposed using one type of filter, which would perform as required. In contrast, to accept Oransi's argument, that when considering the Export 220Volt quotation as a whole two types of filters were being proposed, would have been unreasonable. Accordingly, we deny Oransi's challenges to the evaluation of Export 220Volt's quotation as acceptable.

The protest is dismissed in part and denied in part.

Susan A. Poling
General Counsel