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Decision

Matter of: Valley Apparel, LLC; Coachys & Associates, LLC

File: B-420423.1; B-420423.2

Date: March 15, 2022

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DIGEST

Protests challenging agency technical evaluations are denied where the technical evaluations were reasonable and consistent with the terms of the solicitation.

DECISION

Valley Apparel, LLC, a small business of Knoxville, Tennessee, and Coachys & Associates, LLC, a service-disabled veteran-owned small business (SDVOSB) of Canton, Georgia, protest their exclusion from the competition under request for proposals (RFP) No. SPE1C1-20-R-0157, issued by the Defense Logistics Agency (DLA) for extreme cold/wet weather trousers. Valley Apparel and Coachys argue that the technical evaluations were unreasonable and inadequately documented.

We deny the protests.

BACKGROUND

The agency issued the RFP on June 9, 2021. In general terms, the agency sought to acquire waterproof, extreme cold/wet weather camouflage trousers. Agency Report (AR), Exh. 1, RFP at 1, 6, 20.¹ The requirements were set forth in purchase description No. GL-PD-06-17D, which included specifications for the design, materials, and

¹ The protests were developed separately. Citations are to the record filed in B-420423.1, *Valley Apparel, LLC*, except where otherwise noted.

“finished measurements” for the trousers. *Id.* at 20 (incorporating purchase description); AR, Exh. 9, Purchase Description at 1, 5, 19-20.

The solicitation provided for procurement of three “different and distinct lots” of the same trousers, with each lot awarded to a different offeror. RFP amend. 1 at 2-3 (amending description of lots). Lots 1 and 3 were set aside for small businesses and lot 2 was set aside for SDVOSBs. RFP at 67. The solicitation contemplated award of fixed-price indefinite-delivery, indefinite-quantity contracts with 1-year base terms and three 1-year option terms. *Id.* at 7, 66.

Award was to be made on a best-value tradeoff basis using the following evaluation factors, listed in descending order of importance: product demonstration model (PDM); past performance; and price. *Id.* at 67-68. The non-price factors, when combined, were significantly more important than price. *Id.* For the technical evaluation, offerors were required to submit three PDMs--here, three medium-regular size trousers and the associated material test data reports.² *Id.* at 60. The solicitation provided that DLA would evaluate, on a pass/fail basis, the PDMs for consistency with the manufacturing operations, visual requirements, and dimensional requirements of the purchase description. *Id.* at 68. Offerors were on notice that DLA would “not further evaluate any offers for which the PDM receives a FAIL rating.” *Id.*

Valley Apparel submitted a proposal for lots 1 and 3, with PDMs that Valley Apparel manufactures at its own facility. AR, Exh. 11, Proposal Part 1 at 1, 5. Coachys submitted a proposal for lot 2, explaining that it had “teamed with Valley Apparel” for the procurement and submitting PDMs that were also manufactured by Valley Apparel at the Valley Apparel facility. Coachys AR, Exh. 12, Proposal Part 2 at 2, 4.

The agency assigned ratings of fail to both Valley Apparel’s and Coachys’s PDMs for inconsistencies with the same five dimensional requirements, *i.e.*, trouser measurements. AR, Exh. 7, Evaluation at 1-2; Coachys AR, Exh. 7, Evaluation at 1-2. Based on these “fail” ratings for the PDMs, DLA excluded Valley Apparel and Coachys from further evaluation and consideration for award. See Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 8; Coachys COS/MOL at 8.

After receiving notification from the agency that their proposals had been determined to be ineligible for award and excluded from the competition, Valley Apparel and Coachys, separately, protested to our Office.

² Trouser sizes were referenced by a combination of dimensions (*i.e.*, x-small, small, medium, large, x-large, 2x-large) and descriptors (*i.e.*, short, regular, long, x-long); thus sizes were identified as *e.g.*, small-short, medium-long, large-regular, etc. See AR, Exh. 9, Purchase Description at 19-20. The purchase description provided detailed finished measurements (in inches) for each of the combination sizes. *Id.*

DISCUSSION

As discussed above, Valley Apparel and Coachys submitted proposals for different lots under the solicitation: Valley Apparel for lots 1 and 3, and Coachys for lot 2. Although the protesters are distinct entities that filed separate protests, the protesters are represented by the same law firm. Moreover, because all the PDMs submitted by the protesters were manufactured by one entity (Valley Apparel) and the agency identified the same deficiencies in both PDMs, the protesters raise substantially the same challenges to the agency's evaluation of their respective proposals. As such, and unless noted otherwise, we address the protests from both protesters as one.

Here, the protesters contend that the agency's evaluation was improper, specifically asserting that the agency's approach to measuring the PDMs was unreasonable and inconsistent with the solicitation. The protesters also object that, even if the agency was correct in identifying five deficient measurements in the PDMs, the record is insufficient for the agency to assign a rating of fail on that basis. In filing and pursuing this protest, Valley Apparel and Coachys have made arguments that are in addition to, or variations of, those discussed below.³ While we do not address every issue raised, we have considered all of the protesters' arguments and conclude none furnishes a basis on which to sustain the protest.

Measurements

As part of the technical evaluation, the solicitation identified several subfactors under which the submitted PDMs would be assessed.⁴ RFP at 68. For the dimensional requirements subfactor, DLA identified deficiencies in Valley Apparel's and Coachys's PDMs under five of the seven measurements (*i.e.*, the "trouser finished measurements") identified in the purchase description. The protesters dispute each of the five deficient measurements. We discuss two representative examples below.

The evaluation of technical proposals is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best

³ For example, DLA identified an issue with the length of the PDMs' suspender loops under the manufacturing operations subfactor of the technical evaluation, but concluded that Valley Apparel and Coachys should be evaluated as pass for that subfactor. AR, Exh. 7, Evaluation at 1; Coachys AR, Exh. 7, Evaluation at 1. Valley Apparel and Coachys withdrew their protests of DLA's measurement of the suspender loops in light of that pass rating. Valley Apparel Comments at 3 n.1; Coachys Comments at 3 n.1.

⁴ These subfactors were: (1) manufacturing operations; (2) visual requirements; (3) dimensional requirements; (4) hydrostatic resistance of sealed seams; (5) appearance after laundering of sealed seams; (6) test data report of basic shell material; and (7) test data report of reinforcement material. RFP at 68. The PDMs were to be assessed a pass/fail rating under each of the seven subfactors, and a failure in any of the subfactors would result in a rating of fail for the PDM evaluation factor. *Id.*

method of accommodating them. *Highmark Medicare Servs., Inc., et al.*, B-401062.5 *et al.*, Oct. 29, 2010, 2010 CPD ¶ 285 at 12. An agency’s evaluation judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and must bear a rational relationship to the evaluation criteria announced in the solicitation. *Southwest Marine, Inc.; Am. Sys. Eng’g Corp.*, B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. A protester’s disagreement with an agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 9.

Our Office will question the agency’s evaluation of proposals only where it violates a procurement statute or regulation, lacks a reasonable basis, or is inconsistent with the stated evaluation criteria for award. *Management Sys. Int’l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. Here, we find nothing in the agency’s evaluation to be objectionable or inconsistent with the terms of the solicitation.

The solicitation required each offeror to submit, as the PDM, three medium-regular size trousers and associated test data reports. RFP at 11. The PDMs were “tested and evaluated for consonance to [the purchase description] for visual, dimensional, manufacturing, and end item testing requirements.” RFP amend. 1 at 3. The solicitation dictated that if the PDMs did not conform to all requirements of the referenced purchase description, this could “result in an unfavorable evaluation of the offer.” *Id.* Moreover, offerors were warned that a failure under any PDM subfactor would result in a rating of fail for the overall PDM factor. RFP at 68.

Under the dimensional requirements subfactor, the agency measured the PDMs for conformance with the “finished measurements” identified in the purchase description.⁵ AR, Exh. 9, Purchase Description at 19; AR, Exh. 7, Evaluation at 2-3; Coachys AR, Exh. 7, Evaluation at 2-3. When evaluating the PDMs submitted by Valley Apparel and Coachys, DLA identified the following dimensional deficiencies in those PDMs:

	Purchase Description⁶	Valley Apparel	Coachys
Waist Relaxed	19 3/4” - 20 1/2”	18 3/4”	19”
Inseam	28 1/2” - 29 1/2”	28”	28”
Outseam	41” - 42”	39 3/4”	39 1/4”
Leg Opening - Relaxed	7 3/4” - 8 1/4”	7”	7 1/2”
Side Leg Zipper Opening	24 1/2” - 25 1/2”	24”	24”

⁵ According to the RFP, the PDM would be evaluated against “ALL of” the dimensional requirements in the purchase description. RFP at 70. The protester acknowledges that this evaluation included evaluation against the “finished measurements.” See, e.g., Valley Apparel Protest at 9; Coachys Protest at 9.

⁶ This reflects the measurements for medium-regular size trousers, to include specified tolerance.

AR, Exh. 9, Purchase Description at 19; AR, Exh. 7, Evaluation at 2-3; Coachys AR, Exh. 7, Evaluation at 2-3. On the PDM evaluation form, for each deficiency, the evaluator referenced the applicable dimensional requirements from the purchase description, and then listed the specific measurement taken of the offerors' PDMs. AR, Exh. 7, Evaluation at 2-3; Coachys AR, Exh. 7, Evaluation at 2-3.

The protesters contend that their PDMs met the measurements specified in the purchase description when they measured the trousers before submission, and that the agency must have improperly measured the trousers as part of its assessment to conclude otherwise. Valley Apparel Protest at 15-18; Coachys Protest at 15-18. The protesters argue, for example, with respect to the "waist relaxed" measurement, "[u]nless the sample is pulled flat and the effect of the elastic draw cord eliminated, the measurement of the waist will be erroneously short." Valley Apparel Protest at 17; Coachys Protest at 17.

The agency defends its assessment arguing that it evaluated the PDMs reasonably, following the instructions for measurements provided in the purchase description. Valley Apparel COS/MOL at 17-19; Coachys COS/MOL at 17-19. For example, the agency identifies that under the "waist relaxed" measurement, the purchase description includes just one note: "Waist measurement taken flat from folded edge to folded edge." AR, Exh. 9, Purchase Description at 19-20. The record reflects that the evaluator relied on the solicitation's specifications during the evaluation, recording the specific measurements from the purchase description (including tolerance) and the evaluator's measurement of the submitted PDMs. AR, Exh. 7, Evaluation at 1; Coachys AR, Exh. 7, Evaluation at 1. The agency submitted a declaration from the evaluator who measured the PDMs, attesting that the evaluator, when taking the measurements, understood that the "waist measurement [was] to be taken with the waist relaxed" and "flat from folded edge to folded edge" as indicated in the purchase description. AR, Exh. 8, Declaration at 2; Coachys AR, Exh. 8, Declaration at 2.

The protesters' disagreement with the agency's waist measurement provides no basis on which to sustain the protest. *See, e.g., Ashland Sales & Serv. Co.*, B-291206, Dec. 5, 2002, 2003 CPD ¶ 36 at 7 (rejecting protester's argument about the interpretation of the purchase description). Here, the protesters do not identify any basis in the solicitation (or, in particular, the purchase description) that supports their contention that any measurement taken without manipulating the PDM would result in a flawed measurement. Valley Apparel Protest at 17; Coachys Protest at 17. In other words, while the protesters argue that there is a better, more accurate way to measure the PDMs, they have nevertheless failed to establish that the agency's approach was unreasonable or was otherwise inconsistent with the terms of the solicitation.

The protesters also argue, for example, that the agency's measurement of the "side leg zipper opening" violated the terms of the solicitation. Valley Apparel Comments at 33-34; Coachys Comments at 33-34. The agency found that the protesters' side leg zipper openings fell short of the dimensions required by the purchase description. In describing how the agency took this measurement, the evaluator explained that the

dimension was measured consistent with the instructions of the purchase description which stated that the “[s]ide leg zipper is measured from the top of top stop to bottom of bottom stop.” AR, Exh. 8, Declaration at 3. The protesters, however, point to section C of the solicitation, the statement of work, which provides the following notice regarding slide fasteners (zippers):

Special Note!! All slide fasteners used are to be measured from “stop to stop”. Recommend that this measurement be taken randomly before slide fasteners are sewn to the items, coverall, or any item referred to in the solicitation.

RFP at 27. Even though the protesters concede that the RFP provided for evaluation of the PDMs according to the “finished measurements,” the protesters argue that this note meant that “the zipper will not be measured as part of the PDM measurement process.” Valley Apparel Protest at 9; Coachys Protest at 9; Valley Apparel Comments at 33; Coachys Comments at 33.

The agency responds that the zipper measurement is based on the purchase description’s “finished measurements,” which means that the measurement of the zipper is taken after it is sewn into the garment, and that zippers are “routinely measured in their finished state since it is likely that due to sewing the actual zipper may have to be slightly longer prior to insertion, and/or extra care is required in sewing, to ensure that the finished measurement meets end item requirements.” AR, Exh. 8, Declaration at 3-4; see *also* AR, Exh. 9, Purchase Description at 19-20 (specifying the “finished measurements” for the trousers).

To the extent that this recommendation in section C conflicted with the solicitation’s stated evaluation criteria providing for assessment of PDMs against the finished measurements specified in the purchase description, that conflict, at most, created an ambiguity in the solicitation. *IDS Int’l Gov’t Servs., LLC*, B-419003, B-419003.2, Nov. 18, 2020, 2020 CPD ¶ 383 at 5-6 (finding conflicting terms created ambiguity in solicitation). Any ambiguity here, however, was a patent one, because it was apparent on the face of the solicitation. *Continuity Glob. Sols.-SPP Sec. Joint Venture*, B-419997, Oct. 12, 2021, 2021 CPD ¶ 340 at 5.

Under our Bid Protest Regulations, a patent ambiguity must be protested prior to the time set for receipt of initial proposals, when it is most practicable to take effective action against such defects. *Point Blank Enters., Inc.*, B-415021, Oct. 16, 2017, 2017 CPD ¶ 319 at 4; 4 C.F.R. § 21.2(a)(1). When a patent ambiguity exists but is not challenged prior to the proposal submission deadline, we will not consider subsequent untimely arguments asserting the protester’s own interpretation of the ambiguous provision. *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10. As such, the protesters were required to raise an objection to the solicitation before the proposal submission date. *Continuity Glob. Sols.*, *supra* at 6. Because the protesters failed to challenge the terms of the solicitation until after award was made, this allegation is untimely and is dismissed. *Id.*; *Point Blank Enters.*, *supra* at 4 (dismissing as untimely

an argument regarding a PDM solicitation requirement where, to the extent differences between provisions created an ambiguity, any ambiguity was patent).

Assignment of Rating

The protesters also argue, in the alternative, that even if the agency correctly measured the PDMs, the agency could not have assigned a rating of fail on the basis of the deficient measurements. Valley Apparel Comments at 4-33; Coachys Comments at 4-33. Referring to the definition of “fail” in the solicitation, Valley Apparel and Coachys contend that the record does not contain a sufficient basis to assess that rating. *Id.*

The solicitation defined a rating of fail, in part, as “[t]he PDM substantially fails to meet many significant designs and/or other requirements of the acquisition documentation (i.e. specification; commercial item description; purchase description, etc.) and indicates a lack of understanding of the technical requirements.” RFP at 73. In contrast, the solicitation defines a rating of pass to include a PDM that “either does not contain a weakness or contains a weakness or weaknesses that are either easily correctable in production or require preventative corrective action in production which can be accomplished.” *Id.*

The protesters acknowledge that the contemporaneous evaluations for each offeror include findings that the PDM “substantially fails to meet many significant designs and/or other requirements of the acquisition documentation” and “cannot become acceptable without extensive corrective action or remedy that would be tantamount to a new PDM.” See AR, Exh. 7, Evaluation at 3; Coachys AR, Exh. 7, Evaluation at 3. The protesters however, assert that more documentation is needed about why the measurement deficiencies rendered the PDM “completely unacceptable” according to the solicitation’s definition of fail, urging our Office to discount the evaluator’s declaration that provides additional detail about the assignment of the rating of fail. Valley Apparel Comments at 4-33; Coachys Comments at 4-33. In short, the protesters contend that the agency’s explanations constitute *post hoc* rationalizations not documented in the evaluation record.

Our decisions consistently have explained that we will not limit our consideration to contemporaneously-documented evidence, but also will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, when those explanations are credible and consistent with the contemporaneous record. *Id.*; *ERC, Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 9. Here, along with the evaluation record, the agency report included a declaration from the evaluator that took the measurements of the PDMs submitted by the offerors. We find the evaluator’s declaration--which does not contradict nor add any new substantive information to the evaluation record--merely provides additional detail regarding why the evaluator concluded the assessed deficiencies were sufficiently significant (individually and in combination) to merit a rating of fail.

Consequently, the protesters' arguments that defects in their PDMs were easily correctable represent nothing more than disagreement with the agency's reasonable evaluation. Without more, these arguments provide no basis for our Office to sustain the protest. See *American Apparel, Inc.*, B-407399.2, Apr. 30, 2013, 2013 CPD ¶ 113 at 7 (denying protest asserting that the agency should have construed defects identified in the protester's PDM as minor and easily correctable).

The protests are denied.

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