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Decision

Matter of: C&H SERVICE Srl

File: B-310790

Date: February 5, 2008

Sam Z. Gdanski, Esq., and Scott H. Gdanski, Esq., Gdanski & Gdanski, LLP, for the protester.

Gary R. Allen, Esq., Candice D. Cleere, Esq., and Neil Whiteman, Esq., Department of the Air Force, for the agency.

Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's proposal where proposed item did not meet solicitation requirement for listing on specified certification website; agency reasonably disregarded protester's claim that proposed item was identical to another item listed on website where only supporting evidence was from protester and its suppliers.

DECISION

C&H SERVICE Srl protests the Department of the Air Force's rejection of its proposal, and the award of a contract to Sanson Bruno, under request for proposals (RFP) No. FS5682-07-R-0030, for furnishing and installing air conditioning units. C&H primarily asserts that the agency improperly determined that the firm's proposed units did not meet the RFP's requirement that the units be listed on a certification website.

We deny the protest.

On July 25, 2007, the Air Force issued the RFP for certain air conditioning units (units capable of both cooling and heating) to be installed at locations surrounding Aviano Air Base, Italy. The RFP required the units to meet various specifications, including that they be "EUROVENT certified" in a certain class, and that the air

conditioner data be available at the website www.eurovent-certification.com.¹ AR, Tab 18, at 1. In response to the RFP, the agency received six proposals, including the protester's and the awardee's. While the protester proposed one item at a single price, the awardee proposed six different brands of air conditioner at different prices, with four priced lower than the protester's. The other four proposals were eliminated from the competition for reasons not relevant here. The agency then sought information from C&H and Sanson Bruno regarding their proposed items' Eurovent certification. Contracting Officer's (CO) Statement at 1.

The agency determined that the awardee's four lowest-priced items were not Eurovent certified. With regard to the fourth lowest priced item, the agency requested product information from Sanson Bruno, and ultimately concluded that this item was not listed on the Eurovent website. The agency then requested information from C&H. The protester responded with a statement from another firm--apparently the supplier of the units to C&H--that the units were "from Bonaga Italia, brand Sermond, Model SRF 12 H registered with Eurovent under the serial number MSH 12HRN1." AR, Tab 13, B, at 3. The agency subsequently searched the Eurovent website and discovered that the brand name associated with this model number actually was Midea, manufactured by GD Midea Air Conditioning Company, Ltd. There was no mention of the brand name Sermond on the website. Legal Memorandum at 3. The agency then questioned C&H about its product a second time, and the protester responded with two more certifications, one from itself and one from Bonaga Italia. Both certifications stated that the proposed unit was marketed with the brand Sermond by Bonaga Italia, and was certified under the code MSH 12HRN1 of GD Midea Air Conditioning Equipment Company, Ltd. on the Eurovent certification website. Based on this exchange, the agency concluded that the protester's proposal was ineligible for award because there was no item under the Sermond brand listed on the Eurovent website. The agency thus made award to Sanson Bruno for its fifth lowest-priced unit, which was listed on the Eurovent website, at a price higher than C&H's. Upon learning that the agency had determined that its product was ineligible for award, C&H filed this protest.

C&H primarily asserts that it should have received the award because its proposed unit actually was listed on the Eurovent website. In this regard, the protester asserts that its unit was in fact the Midea unit listed on the website, the only difference between the two units being the marketing name.

Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is

¹ The agency required offerors to provide Eurovent-certified products as a means of insuring that it would receive quality products from reliable manufacturers. Agency Report (AR), Tab 13, F, at 1.

unacceptable and may not form the basis for award. Gear Wizzard, Inc., B-298993, Jan. 11, 2007, 2007 CPD ¶ 11 at 2. The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the acceptability of the proposed item; we will not disturb such a determination unless it is shown to be unreasonable. Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4.

The agency's determination that C&H's proposed product was unacceptable for failing to meet the Eurovent listing requirement was reasonable. It is undisputed that C&H's proposed Sermond brand product was not listed on the Eurovent website under the brand as stated in C&H's proposal. This led the agency to seek information from C&H clearly establishing that its proposed Sermond product in fact was listed on the website. In response, C&H provided only statements from itself and a supplier that the Sermond product was actually a Midea product, with no independent information supporting the claim. C&H provided no supporting information from the manufacturer or from Eurovent, and the agency's search of the website under "Midea Manufacturing" did not yield any items with the Sermond brand. Legal Memorandum at 6. We note that, in connection with its protest, C&H has provided a letter from GD Midea Air Conditioning Equipment Company, Ltd. stating that the proposed unit is in fact identical to the listed Midea unit. Protester's Comments, Dec. 17, 2008, exh. 1. However, given C&H's failure to provide this information in response to the agency's request during the evaluation process, the agency reasonably concluded at that time that the protester had failed to demonstrate that its product was listed on the Eurovent website.

C&H argues that the agency could not reject its proposal merely for lacking a specific certification. It cites decisions of our Office--e.g., Pem All Fire Extinguisher Corp., B-231343.3, Nov. 2, 1988, 88-2 CPD ¶ 430--for the proposition that a requirement for a specific certification does not provide a basis for excluding a product from consideration. Under our Bid Protest Regulations, protests of alleged solicitation improprieties must be filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2007). The RFP here clearly required proposed products to be listed on the Eurovent website. Thus, to the extent that C&H believed it was improper to require Eurovent certification, it was required to protest on this ground prior to the closing time. Since it did not do so, this aspect of its protest is untimely and will not be considered.

Finally, C&H alleges that the agency did not treat it and the awardee equally, specifically, that the agency went to greater lengths in determining whether the awardee's fourth lowest priced item was listed on the website than it did in investigating whether C&H's product was listed. Had the agency made an equal effort, the protester asserts, it would have determined that C&H's product was in fact listed on Eurovent and found its proposal acceptable. This argument is without merit. The record shows that the agency provided both the awardee and the protester the same opportunity to demonstrate that their products were listed on the

Eurovent website. As detailed above, both offerors were requested to provide information demonstrating that their products were listed, both submitted information, and the agency rejected both products on the basis that the information was not adequate to show that the products were listed. There thus is no basis for us to find unequal treatment.²

The protest is denied.

Gary L. Kepplinger
General Counsel

² The protester also challenges its past performance rating. However, since, as discussed above, its proposal was reasonably found to be technically unacceptable, the protester was not prejudiced by any error in this area. Its argument therefore provides no basis for sustaining the protest. See AEC-ABLE Eng'g Co., Inc., B-257798.2, Jan. 24, 1995, 95-1 CPD ¶ 37.