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**Comptroller General
of the United States**

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

Decision

Matter of: Safety Storage, Inc.

File: B-299901.2

Date: December 3, 2007

Kenneth Wilkins, Safety Storage, Inc., for the protester.

Kristen Scibuola, for Containment Consultants, Inc., an intervenor.

Daniel K. Poling, Esq., and Gwendolyn Hoover, Esq., Defense Logistics Agency, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging awardee's noncompliance with mandatory technical requirements is denied where the record shows that the awardee's proposal was reasonably evaluated by the agency as meeting the requirements.

DECISION

Safety Storage, Inc. protests the award of a contract to Containment Consultants, Inc., d.b.a. Ideal Environmental Products (Ideal) under request for proposals (RFP) No. SB3100-7071-9501, issued by the Defense Logistic Agency for a modular pest control building. Safety contends that Ideal's proposed pest control building does not comply with the RFP's specifications.

We deny the protest.

The RFP was issued on September 5, 2007 as a combined synopsis/solicitation for commercial items in accordance with Federal Acquisition Regulation (FAR) part 12.6.¹ The RFP was issued as a total small business set-aside and set forth the minimum requirements for the pest control building. Two of the requirements

¹ The requirement was initially synopsisized on April 3, 2007 and an award was made to Ideal on June 8, 2007. Safety protested that award to our Office on June 20, 2007. We dismissed the protest as untimely. However, the agency subsequently decided to cancel the award, revise its specifications, and resolicit.

relevant to this protest are that: (1) the modular storage building must be approved by the Factory Mutual (FM) System as a relocatable hazardous materials storage unit in accordance with Flammable and Combustible Liquid Storage Building Standard 6049 (RFP at 2); and (2) the building must include a floor grating/secondary containment sump system with “a seamless acid/corrosive resistant high density polyethylene liner” (RFP at 3).

The RFP provided for the evaluation of only two non-cost factors: technical capability and past performance. RFP at 4. Offerors were advised that technical capability would be evaluated on a go/no-go basis, and that those offerors whose proposals are found technically acceptable, would be reviewed to determine whether the offeror has a satisfactory record of past performance. Offerors were required to submit descriptive literature and other information that clearly indicated that the proposed pest control building satisfied all of the stated minimum technical requirements. Id. Award was to be made to the lowest priced, technically acceptable offer.

Only Safety and Ideal submitted proposals in response to the RFP, and based on an initial review, the agency concluded that neither proposal was acceptable; instead, the agency decided that both proposals were “susceptible of being acceptable.” Agency Report (AR) Tab 5, Pest Control Proposals Evaluation. In this regard, the technical evaluator noted five deficiencies in Safety’s proposal and one deficiency in Ideal’s proposal.

Discussions were held with both offerors so that the agency could identify, and the offerors could address, the evaluated deficiencies in their proposals. Of relevance here, Ideal’s technical proposal was found unacceptable because Ideal did not clearly demonstrate that its offered spray-on liner met the criteria of the seamless acid/corrosive resistant high-density polyethylene liner required by the specification. In response to the agency’s concerns, Ideal addressed the matter as follows:

Ideal Environmental has several spray on coatings which are seamless and provide excellent acid/corrosive resistance. If awarded the contract we will offer the end user several options to choose from. These coatings are not susceptible to cracking and damage from rodents and are easier to clean. However if the end user requires a seamless acid/corrosive resistant high density polyethylene (HDPE) liner one will be provided per the minimum technical requirements stated in the combined synopsis/solicitation at no additional cost.

AR, Tab 8, Ideal’s Final Proposal Revision.

After the evaluation of the offeror’s final revised proposals, both Safety and Ideal received ratings of “go” for both technical capability and past performance. Safety proposed a price of \$225,840.46 and Ideal’s price was

\$206,000. Since Ideal offered the lowest price, award was made to Ideal on September 27. Safety filed this protest with our Office on October 5, 2007.

Safety contends that Ideal's proposal should have been rejected as technically unacceptable because Ideal offered a coating that was not a high-density polyethylene sump liner and because Ideal is not an FM approved manufacturer as required by the RFP.²

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004 CPD ¶ 70 at 3.

With respect to its allegation that Ideal will not provide a pest control building with the required high-density polyethylene liner, Safety is factually incorrect. As explained above, Ideal, in response to the agency's concerns during discussions, specifically stated in its final revised proposal that it would comply with the government's requirement for a polyethylene liner at no additional cost.

With respect to FM approval, the RFP required the pest control building to be an FM "approved and labeled relocatable hazardous materials storage unit in accordance with Flammable and Combustible Liquid Storage Building Standard 6049." RFP at 2. The RFP specified that the FM certification documentation for the building must be submitted to the government in conjunction with drawings/details submission in order to receive government approval of drawings; these drawings were not required to be submitted until 30 days after award. RFP at 4.

Our review shows that Ideal did not take exception to the requirement that its pest control building be FM approved and labeled, or to the requirement that documentation of FM approval was to be provided with the detailed drawings to be supplied 30 days after award. In addition, Ideal has provided a copy of a May 22, 2007 letter from FM Approvals detailing the negotiations between Ideal and FM that should lead to an approval decision. As a result, we have no basis to conclude that Ideal did not meet the solicitation requirements in this area. Whether Ideal

² In its initial protest, Safety alleged that Ideal's pest control building failed to satisfy several additional RFP requirements that relate to the exhaust vent extensions, stainless steel containment shelves, storage tank, and floor grating supports. After review of the agency's report submitted in response to the protest, the protester abandoned these contentions.

completes the approval process in time to comply with its contractual obligation to provide evidence of FM approval within 30 days of award is a matter of contract administration over which we generally do not exercise bid protest jurisdiction; issues of contract administration are within the discretion of the contracting agency. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2007).

The protest is denied.

Gary L. Kepplinger
General Counsel