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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: ProMar; Urethane Products Corporation

File: B-292409; B-292409.2; B-292409.3

Date: August 25, 2003

William L. Walsh, Esq., Carla D. Craft, Esq., Carol F. Westmoreland, Esq., and J. Scott Hommer, III, Esq., Venable, Baetjer and Howard, for ProMar, and Steven E. Kellogg, Esq., and A. Ben Foster, Esq., Thompson Coburn, for Urethane Products Corporation, the protesters.
Eric Plane for Fender Care Naval Solutions Ltd., the intervenor.
Carl N. German, Esq., Department of the Navy, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protesters' quotations for pneumatic rubber fenders as technically unacceptable where the quotations included product literature that did not show compliance with the standards required by the solicitation.

DECISION

ProMar and Urethane Products Corporation protest issuance of a purchase order to Fender Care Naval Solutions Limited under request for quotations (RFQ) No. N65540-03-Q-0274, issued by the Department of the Navy, Naval Surface Warfare Center, Philadelphia, Pennsylvania, for pneumatic and hydro-pneumatic rubber fenders for use in berthing and mooring ships and submarines.[1] The protesters allege that the agency unreasonably rejected their proposals as technically unacceptable.

We deny the protests.

[1] A pneumatic fender is inflated with air and floats on the surface of the water to serve as a protective buffer for ships. A hydro-pneumatic fender is similar but contains water in addition to pressurized air, and has a weight attached to one end so that the fender is partially submerged as a protective buffer for submarines.

The RFQ, issued March 31, 2003, contemplated the issuance of a fixed-price purchase order.[2] The RFQ stated that the agency intended to select, based on initial quotations, the lowest-priced, technically acceptable quotation. The RFQ stated the following three factors for determining technical acceptability: technical compliance, corporate experience and past performance. Under the technical compliance factor, the RFQ stated:

> [A vendor] must demonstrate the Fenders it intends to furnish will comply with the requirements contained in the Specifications included in this RFQ. To comply with this requirement, [vendors] shall furnish existing product or descriptive literature, brochures, etc. that demonstrate the items to be furnished comply with the requirements set forth in the attached Specifications.

RFQ at 3.[3]

The specifications in the RFQ stated that the fenders to be furnished under the RFQ "shall be in accordance with the requirements of ISO Standard Number 17357, 2002(E)." This standard, published by the International Organization for Standardization, states the requirements for high-pressure floating pneumatic rubber fenders, including performance requirements and prototype test requirements. Agency Report, Tab 1, ISO Standard 17357. Among those requirements are requirements for basic body construction consisting in part of "synthetic-tyre-cord layers" for reinforcement, for a "static ozone ageing test," and for internal and endurable pressure (i.e., inner air pressure at which the fender bursts). Id., §§ 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.3.1, Tables 3 & 4.

The agency received five quotations. One was immediately rejected as unacceptable for not including complete technical compliance information or any corporate experience or past performance information. The agency evaluated the remaining quotations, including those of the protesters and Fender Care. Fender Care quoted

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[2] The RFQ was issued pursuant to Federal Acquisition Regulation (FAR) § 12.203 and the agency employed the simplified procedures authorized by FAR Subpart 13.5, Test Program for Certain Commercial Items, which is applicable to acquisitions of commercial items that, as here, exceed the simplified acquisition threshold but do not exceed $5 million, including options.

[3] Under the corporate experience and past performance factors, the RFQ also stated the information that vendors were required to submit and the bases for which quotations would be determined acceptable.

products manufactured by The Yokahama Rubber Co., Ltd.[4] Both protesters quoted products manufactured by HS R&A Co., Ltd.

The agency evaluation determined that only Fender Care's quotation included information demonstrating that the quoted products complied with all of the requirements of ISO 17357. Although not required by the terms of the RFQ, Fender Care's quotation included independent testing and certification documentation demonstrating compliance with ISO 17357. Agency Report, Tab 7, Fender Care's Quotation, Technical Compliance Information. ProMar's quotation included product literature and general statements that the fenders manufactured by HS R&A comply with ISO 17357. Agency Report, Tab 5, ProMar's Quotation, at 2, ¶ 1.0, Technical Compliance. Urethane's quotation also included product literature but did not include a statement of compliance with ISO 17357. Agency Report, Tab 6, Urethane's Quotation. Based on its review of the quotations, the agency determined that all except Fender Care's were technically unacceptable.[5] On May 23, the agency issued a purchase order for the fenders to Fender Care. These protests followed.

Both protesters allege that the agency unreasonably evaluated their proposals as unacceptable under the technical compliance factor.[6] The protesters allege the product literature included with their proposals demonstrated compliance with a Japanese International Standard (JIS), which the protesters contend is equivalent to the ISO 17357 standard, and that the quotations thus demonstrate compliance with ISO 17357.

In reviewing an agency's evaluation, we will not reevaluate quotations; we will only review the evaluation to determine whether the evaluation was reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws

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[4] Fender Care was the only vendor to quote Yokahama fenders.

[5] The prices and evaluation results for Fender Care's and the protesters' quotations were as follows:

Evaluation Factor	Fender Care	ProMar	Urethane
Technical Compliance	Acceptable	Unacceptable	Unacceptable
Corporate Experience	Acceptable	[DELETED]	[DELETED]
Past Performance	Acceptable	[DELETED]	[DELETED]
Overall	Acceptable	Unacceptable	Unacceptable
Price	$3,688,320	$[DELETED]	$[DELETED]

[6] The technical acceptability of Fender Care's quotation or Yokahama's fenders is not disputed here.

and regulations. Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Microcosm, Inc., B-277326 et al., Sept. 30, 1997, 97-2 CPD ¶ 133 at 4.

Here, the RFQ stated that a quotation had to include information demonstrating that the proposed fenders comply with the specifications stated in the RFQ, which included ISO 17357. The quotations from ProMar and Urethane included HS R&A product literature. However, neither that literature nor any other information in the quotations demonstrated compliance with all of the ISO 17357 requirements. In fact, some of the information was interpreted by the agency as indicative that the product did not comply with the ISO 17357 requirements.

Specifically, in the case of the ISO requirement for a reinforcement layer consisting of "synthetic-tyre-cord," Agency Report, Tab 1, ISO 17357, ¶ 6.1.1, the ISO standard warned of common confusion within the industry over two very different types of reinforcement. These two categories are "synthetic-tyre-cord" and "canvas fabric." ISO 17357 defines and illustrates each category in terms of the pattern of fibers. Synthetic-tyre-cord, that is tyre cord made of synthetic fibres, primarily consists of parallel strands of fiber (warps), with only an occasional perpendicular fiber strand (weft) woven through the warps. The effect is that synthetic-tyre-cord appears as parallel strands and not a woven fabric, whereas canvas fabric consists of an equal number of warps and wefts, with each warp weaving through all the wefts, and vice versa, thus creating a woven fabric. These two categories of reinforcement layers have markedly different density and tensile strength characteristics, and ISO 17357 specifically states:

> Although canvas fabric such as "belt fabric" or "tyre-cord-chafer" is also used as reinforcement in the rubber industry and sometimes [is] mistaken for synthetic tyre cord, it is completely different from synthetic tyre cord. . . . The synthetic-tyre-cord arrangement has an obvious advantage over the canvas-fabric arrangement, as it is able to eliminate friction and wear points between wefts and warps.

Agency Report, Tab 1, ISO 17357, Annex A, at 14-15.

The agency's evaluation referenced the product literature in the protesters' quotations, which stated at various places that the reinforcing layer of the fender body construction was "nylon fabric layers" and "reinforcement fabric" that consists of "cord layers." See Agency Report, Tab 5, ProMar's Quotation, HS R&A Spec. No. F-304-1199, at 3; HS R&A Spec. No. F-304-1200, at 3; § 7.0 Product Literature, at 30; Tab 6, Urethane's Quotation, HS R&A Spec. No. F-304-1199, at 3; HS R&A Spec. No. F-304-1200, at 3. The agency determined that this did not show compliance with the ISO 17357 requirements because the reinforcement appeared to be fabric and the literature did not demonstrate that the reinforcement would consist of the required

"synthetic-tyre-cord layers."[7] While ISO 17357 permits alternatives to synthetic-tyre-cord layers with evidence that its strength is equal or superior to the synthetic-tyre-cord arrangement, the quotations did not contain such evidence. Based on this analysis, the agency determined the quotations did not demonstrate compliance with the ISO 17357 requirement for synthetic-tyre-cord reinforcement. Agency Report, Tab 9, Technical Evaluation Memorandum, at 4.

We believe that the specific discussion of fabric and synthetic-tyre-cord in the ISO 17357 standard supports the agency's determination. While the protesters' quotations used the term "cord" in describing the reinforcement layers, that term alone is not sufficient to show compliance with the ISO standard, especially since the quotations clearly state that the reinforcement layers are "fabric." See, e.g., Agency Report, Tab 5, ProMar's Quotation, § 1.0, Technical Compliance, at 5; HS R&A Spec. No. F-304-1199, at 3; HS R&A Spec. No. F-304-1200, at 3; § 7.0 Product Literature, at 30; Tab 6, Urethane's Quotation, HS R&A Spec. No. F-304-1199, at 3; HS R&A Spec. No. F-304-1200, at 3. As indicated above, the ISO 17357 standard not only describes synthetic-tyre-cord in very precise terms, but also warns that various reinforcement fabrics, including fabric using the term "tyre-cord," are mistaken for synthetic-tyre-cord within the industry, but they are "completely different from synthetic tyre cord." Under the circumstances, the agency could reasonably find that the protesters' quotations failed to demonstrate compliance with the standard as required by the RFQ. See Koehring Cranes & Excavators; Komatsu Dresser Co., B-245731.2, B-245731.3, Nov. 23, 1992, 92-2 CPD ¶ 362 at 4 (agency has broad discretion to determine whether product literature demonstrates compliance with a solicitation's technical requirements, and we will disturb that determination only if it is shown to be unreasonable).

Another requirement of ISO 17357 is the "static ozone ageing test." The standard requires that the rubber layers of the fender shall satisfy the requirements identified in Table 3 of ISO 17357. Agency Report, Tab 1, ISO 17357, ¶¶ 6.1.2, 9.2. Table 3 identifies a number of tests and corresponding performance requirements, including the static ozone ageing test for the outer rubber layer to be conducted in accordance with ISO test method 1431-1:1989 and satisfy the following performance requirement:

> No cracks after elongation by 20 % and exposure to 59 [parts of ozone per hundred million of air by volume (pphm)] at 40°C for 96 [hours].

The protesters' quotations identify specific tests to be conducted in accordance with "JIS K6301" standards. See Agency Report, Tab 5, ProMar's Quotation, HS R&A

[7] To the extent the protesters allege that the agency unreasonably determined that HS R&A's nylon fabric was not synthetic, they are factually mistaken. The record does not show that the agency determined that HS R&A's reinforcement was not synthetic.

Spec. No. F-304-1199, at 4; HS R&A Spec. No. F-304-1200, at 4; Tab 6, Urethane's Quotation, HS R&A Spec. No. F-304-1199, at 4; HS R&A Spec. No. F-304-1200, at 4. Although these tests appear to correspond to some other ageing test requirements identified in Table 3 of ISO 17357, the quotations do not identify a test that corresponds with the static ozone ageing test. The agency determined that, since the quotations did not address the static ozone ageing test, they did not demonstrate compliance with this ISO 17357 and RFQ requirement. Agency Report, Tab 9, Technical Evaluation Memorandum, at 2-3. Based on our review, we find this evaluation judgment to be reasonable.

ISO 17357 also contains pressure requirements relating to internal (burst) pressures in both compressed and non-compressed situations stated in Table 4 of ISO 17357. Agency Report, Tab 1, ISO 17357, ¶¶ 6.1.4, Table 4; Tab 9, Technical Evaluation Memorandum, at 5-6. The data included in the quotations was limited to energy absorption and reaction force calculations when the HS R&A fenders are inflated and under compression. This data does not correspond to or show compliance with the requirements in Table 4 of ISO 17357. Thus, the agency determined, reasonably we think, that the protesters' quotation did not demonstrate compliance with the pressure requirements related to internal (burst) pressures.[8] Agency Report, Tab 9, Technical Evaluation Memorandum, at 5-6.

The protesters also contend that the JIS K6301 standards identified in their quotations represent equivalent standards to ISO 17357 and that their quotations demonstrate compliance with the ISO standards through compliance with the JIS standards. The only evidence submitted to support the protesters' allegations is a declaration by the president of ProMar that people familiar with the industry are aware that the JIS standard is equivalent to the ISO standard. ProMar's Comments, attach. 1, Declaration of ProMar's President, ¶¶ 5-7. The agency responded to the declaration with documentation showing that the JIS standard identified in the HS R&A literature in the protesters' quotations was withdrawn in 1998, Agency Supplemental Report, Tab 29, Information from Japanese Standards Association, along with a comparison chart evidencing that some of the JIS standard requirements identified in the quotations do not comply with corresponding ISO 17357 requirements, Agency Supplemental Report, Tab 30, Comparison of Specifications.

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[8] The president of ProMar submitted a declaration stating that the HS R&A product literature does not address either the Table 3 static ozone ageing test or the requirements at Table 4 of ISO 17357, but that he has confirmed that the static ozone ageing test is performed by HS R&A and that the offered fenders comply with the ISO 17357 Table 4 requirements. ProMar's Comments, attach. 1, Declaration of ProMar's President, ¶¶ 8, 10. No such statement was included with ProMar's quotation.

Our review of the record before us indicates that the JIS standard, as referenced in the protesters' quotations, is not the equivalent of ISO 17357. For example, Table 3 of ISO 17357 states a required value of 400 percent or more for a pre-ageing elongation test of the inner and outer rubber layers of the fender; however, HS R&A's product literature states a JIS "conforming standard" minimum elongation requirement of 350 percent. Similarly, Table 3 of ISO 17357 states a required pre-ageing range of hardness values of 60 ± 10 for outer rubber and 50 ± 10 for inner rubber; however, HS R&A product literature states a JIS "conforming standard" maximum hardness value of 75. For a third example, Table 3 of ISO 17357 states a pre-ageing tensile strength requirement for outer rubber of "18 Mpa or more," which the agency states is about 180 kg/cm^2; however, HS R&A's product literature states a JIS "conforming standard" minimum of 160 kg/cm^2. Agency Report, Tab 1, ISO 17357, Table 3; Tab 5, ProMar's Quotation, HS R&A Spec. No. F-304-1199, at 4; HS R&A Spec. No. F-304-1200, at 4; Tab 6, Urethane's Quotation, HS R&A Spec. No. F-304-1199, at 4; HS R&A Spec. No. F-304-1200, at 4; Agency Supplemental Report, Tab 30, Specification Comparison.[9]

In response to the agency's evidence that the JIS K6301 standards have been withdrawn for 5 years, the protesters identify other JIS standards that have replaced the withdrawn standards, alleging that the requirements under the replaced standards are the equivalent of the ISO 17357 requirements. Assuming, arguendo, that these newly identified JIS standards represent the equivalent of the required ISO 17357 standard, it does not follow that the protesters' quotations demonstrated compliance with those JIS standards, given that the quotations did not identify these other JIS standards, but, as stated above, referenced specific requirements from the withdrawn JIS standard that do not comply with corresponding ISO 17357 requirements. Thus, regardless of any requirements that may be stated under the replacement JIS standards, the express language of the quotations evidences noncompliance with the specific ISO 17357 and RFQ requirements.

ProMar alleges that its general statement of compliance with ISO 17357 was sufficient to demonstrate technical compliance with the RFQ specifications. The allegation fails to account for the RFQ requirement for vendors to submit "existing product or descriptive literature, brochures, etc. that demonstrate the items to be furnished comply" with the RFQ specifications. RFQ at 3. Where the solicitation has such a requirement, a firm responding to the solicitation has the responsibility to demonstrate compliance. Koehring Cranes & Excavators; Komatsu Dresser Co., supra, at 7. Moreover, since, as discussed above, the product literature in Promar's quotation contradicts the general statement of compliance and indicates

[9] ProMar correctly states that the agency's comparison incorrectly identifies, as maximum values, some of the minimum values in the HS R&A product literature. However, our decision correctly states the values set out in the product literature included in ProMar's and Urethane's quotations.

noncompliance with the RFQ's stated minimum requirements, the agency could not have accepted the general statement of compliance in any case. See id. at 7-8. Urethane alleges that the agency should have sought "clarification" of Urethane's quotation, at which time Urethane would have demonstrated compliance with the RFQ requirements. The RFQ provide that the agency intended to award based on initial quotations without conducting discussions. If the agency had informed Urethane that its quotation was technically unacceptable and provided the firm with an opportunity to submit information to make its quotation acceptable, the agency's actions would have constituted discussions, not clarifications, and the agency was not required to inform Urethane that its quotation was unacceptable and provide the firm with an opportunity to revise its quotation. See Warden Assocs., Inc., B-291238, Dec. 9, 2002, 2002 CPD ¶ 215 at 3.

The protesters also allege that the agency evaluation applied an unstated evaluation factor requiring either Yokahama fenders or an independent certification of fender compliance with ISO 17357.[10] The agency evaluation was based solely on the information supplied in the quotations concerning compliance with the RFQ specifications, and did not give any evaluation credit for a particular manufacturer's fender or otherwise indicate a preference for Yokahama fenders. While the detailed certification tests for Yokahama fenders provided in Fender Care's quotation demonstrated compliance with specific RFQ requirements, the RFQ did not require that vendors demonstrate technical compliance with such certification testing documentation, and the agency evaluation gave no credit to Fender Care for achieving certification.[11]

The protests are denied.

Anthony H. Gamboa
General Counsel

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[10] While the protesters allege that the short time between the publication of ISO 17357, Yokahama's certification under the standard, and the agency's issuance of the RFQ limited the field of technically compliant fenders solely to Yokahama fenders, this concerns an alleged improper restriction on competition that was apparent on the face of the solicitation, which had to be protested prior to the RFQ closing date. 4 C.F.R. § 21.2(a)(1) (2003). Since this issue was not protested prior to the closing date, the protest basis is untimely.

[11] The remaining allegations of both protesters concern the agency's evaluation under factors other than technical compliance. However, since the agency properly determined that the protesters' quotations did not comply with the minimum requirements of the solicitation under the technical compliance factor, the quotations are technically unacceptable and not eligible for award, and we need not consider these issues.