



## Decision

**Matter of:** American Physical Security Group, LLC

**File:** B-405059

**Date:** July 25, 2011

---

Jeffrey B. Quante, III, for the protester.  
Dennis J. Gallagher, Esq., Department of State, for the agency.  
Katherine L. Pohl and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

---

### DIGEST

Protest challenging an agency's technical evaluation is denied, where the evaluation was consistent with the criteria stated in solicitation.

---

### DECISION

American Physical Security Group, LLC (APSG), of Lillington, North Carolina, protests the award of contract to Ross Technology Corporation, of Leola, Pennsylvania, under request for proposals (RFP) No. SAQMMA10R0272, issued by the Department of State (DOS) for forced-entry/ballistic-resistant windows.

We deny the protest.<sup>1</sup>

The RFP, issued as a small business set-aside, provided for the award of an indefinite-delivery/indefinite-quantity contract for the fabrication and installation of aluminum forced-entry/ballistic-resistant windows. Detailed performance specifications required that the windows achieve specific "security-related resistances, along with other indicated performances." See RFP § J.2.2.3, Specification 086625, Aluminum Security Windows, ¶ 1.2.A, at 2.

---

<sup>1</sup> Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

Offerors were informed that award would be made on the basis of low price and technical acceptability. RFP § M.1 at 72. The RFP identified a number of technical evaluation factors, including, as relevant here, that the agency would evaluate the offeror's submission for compliance with the stated specifications, which could be shown by providing a certification letter from the agency's Bureau of Diplomatic Security (DS).<sup>2</sup> Additionally, this factor required that offerors provide sample shop drawings with each DS certification. RFP amend. 4, § M.1.1, at 3. The RFP also identified product compliance as another factor, stating, among other things:

The Government will evaluate the extent to which the offeror has provided samples for each of the submittals requirements in each of the Attachment J Specifications to demonstrate that their products and processes meet or exceed the specification requirements. This includes but is not limited to: material specifications, vendor cut sheets, laboratory test reports, one product blast report, one complete assembly shop drawing, manufacturer's product install guide, and one corner sample with finishes for evaluation. For each product type, provide or demonstrate that it meets each of the following: Certification, typical shop drawing, glazing lay-up, installation guide, product cut sheets.

RFP amend. 4, § M.4.1.4, at 3.

DOS received proposals from three offerors, including APSG and Ross.<sup>3</sup> Contracting Officer's Statement (CO) at 7. All of the proposals were found to be technically unacceptable, but capable of being made acceptable through discussions.

APSG's proposal was found to contain numerous deficiencies and weaknesses.<sup>4</sup> A number of the deficiencies reflected the evaluators' judgment that APSG had failed to provide documentation establishing compliance with specification requirements, such as, for example, for air infiltration and water penetration. See Agency Report (AR), Tab 9, Initial Technical Evaluation, at 2.

---

<sup>2</sup> Among the requirements of Specification 086625 is that the contractor provide windows that had been certified by DS. See RFP § J.2.2.3, Specification 086625, Aluminum Security Windows, ¶ 2.1, at 10.

<sup>3</sup> Ross submitted two proposals that were independently evaluated.

<sup>4</sup> The Federal Acquisition Regulation (FAR) defines a deficiency to be a material failure of a proposal to meet a government requirements or a combination of significant weaknesses that increases the risk of unsuccessful performance to an unacceptable level. FAR § 15.001 (2011).

DOS conducted discussions with each of the offerors. CO's Statement at 7. In this regard, the agency informed APSG of each of the evaluated deficiencies and weaknesses in its proposal and requested the firm's final proposal revisions. See AR, Tab 10, Discussions Letter, at 1-3. DOS received and evaluated revised proposals from the offerors, including APSG and Ross. The agency found that Ross's proposals were acceptable, but that APSG's proposal continued to be technically unacceptable. See AR, Tab 12, Final Technical Evaluation, at 2.

Award was made to Ross, and, following a debriefing, APSG filed an agency-level protest with the DOS. DOS denied APSG's agency-level protest, and APGS protested to our Office.

## DISCUSSION

APSG argues that DOS unreasonably evaluated its technical proposal. In this regard, APSG contends that it satisfied all of the technical criteria for product compliance and manufacturing capacity.

Our office reviews challenges to an agency's evaluation of proposals only to assess whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Hernandez Consulting, LLC, B-298810.2, Dec. 21, 2006, 2006 CPD ¶ 203 at 2. 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, 2004 CPD ¶ 70 at 3.

Here, the record supports the agency's determination that APSG's proposal was deficient in a number of regards and therefore technically unacceptable. For example, the evaluators found that APSG did not demonstrate that its proposed windows would satisfy the RFP's air infiltration requirements. Specifically, the solicitation required offerors to demonstrate through laboratory test reports and other documentation that their proposed fixed windows would not have air infiltration exceeding a rate of 0.010 cubic feet per minute/square feet. See RFP amend. 4, § § L.13.2, M.4.1.4, at 2-3; § J.2.2.3, Specification 086625, Aluminum Security Windows, ¶ 1.2.E, at 3.

In its initial proposal, APSG provided a one-page test result summary for an air infiltration test done on an "aluminum fixed window," which stated that the tested window would satisfy the solicitation's air infiltration requirements. This summary document, which states that it was rendered to "McMullen Architectural Systems, Ltd." (a firm that was not otherwise identified in the proposal), references a separate test report that must be consulted "for complete test specimen description and

data.”<sup>5</sup> See APSG Technical Proposal, Product Compliance, at 39. APSG did not provide the more complete test report. In discussions, DOS informed the protester that it had failed, with respect to the air infiltration requirements, to provide “documentation of compliance with the specified testing.” AR, Tab 10, Discussions Letter, at 1. In response, APSG merely informed the agency that it was “not correct” and resubmitted the same one-page summary that was provided in its initial proposal. See APSG Revised Proposal, at 6.

We find that the agency reasonably found APSG’s proposal deficient for failing to provide testing reports demonstrating the compliance of its proposed windows for the air infiltration requirements. As noted above, the RFP specifically required offerors to provide documentation, including laboratory test reports, demonstrating such compliance. See RFP amend. 4, § 4.1.4, at 3. APSG failed to do so, despite being specifically informed of this deficiency in discussions and despite a more complete report being available.

Similarly, DOS noted deficiencies in APSG’s proposal with respect to static and dynamic water penetration because APSG had failed to supply test reports and documentation establishing compliance with the specification requirements for water penetration. See RFP § J.2.2.3, Specification 086625, Aluminum Security Windows, ¶ 2.1.F, G, at 3. Here, too, APSG submitted the same one-page summary document to establish compliance and informed DOS in response to discussions that the agency was incorrect.

Because the record shows that DOS reasonably assessed deficiencies in APSG’s proposal with respect to air infiltration and water penetration, we have no basis to question the reasonableness of the agency’s rejection of the protester’s proposal as technically unacceptable. We do not address the protester’s remaining arguments challenging the agency’s determination that its proposal was technically unacceptable.

---

<sup>5</sup> At the bottom corner of its proposal in a footer, APSG identifies “McMullen Incorporated” as its manufacturing partner, but does not further identify this firm or their relationship. In this regard, APSG states in its proposal that APSG is the manufacturer of the windows. See, e.g., APSG Technical Proposal, Product Compliance, Exterior Security Window, at 29. APSG argues that the agency should have been aware of its relationship with “McMullen, Inc.” from a meeting that took place on December 1, 2009, which was more than 10 months before the submission of initial proposals. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7.

In its comments, APSG protested the award to Ross, arguing that the awardee does not have the required DS certification for its window. We dismiss this supplemental ground of protest as untimely. Under our Bid Protest Regulations, protests shall be filed within 10 days of obtaining actual or constructive knowledge of the basis of protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2011). Here, APSG raised this ground of protest to DOS in the firm's agency-level protest, see AR, Tab 16, APSG Agency-Level Protest, at 1, but did not make this argument in its protest to our Office, following the denial of its agency-level protest.<sup>6</sup> Because APSG did not make this protest argument within 10 days of when it learned the basis of its protest, 4 C.F.R. § 21.2(a)(2), or within 10 days of adverse agency action on its agency-level protest, see 4 C.F.R. § 21.2(a)(3), this ground of protest is untimely.

The protest is denied.

Lynn H. Gibson  
General Counsel

---

<sup>6</sup> APSG's agency-level protest was only provided to our Office in the agency's report.