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**Comptroller General
of the United States**

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

Decision

Matter of: INFICON, Inc
File: B-410502
Date: January 5, 2015

James E. McBride, INFICON, Inc., for the protester.
Bertrand Carret-Troncy, Aerowing, for the intervenor.
John E. Pettit, Esq., Department of the Air Force, for the agency.
Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposed product was technically unacceptable for failing to meet required technical specifications is denied where protester's challenge is based on an unreasonable interpretation of the solicitation's specifications.

DECISION

INFICON, Inc. (INFICON), of East Syracuse, New York, protests the award of a contract to Aerowing, of Las Vegas, Nevada, under request for proposals (RFP) No. FA8517-14-R-31684 issued by the Department of the Air Force for hydrogen leak detectors. INFICON argues that the awardee's proposed product did not meet the requirements of the solicitation.

We deny the protest.

BACKGROUND

The solicitation, issued on April 9, 2014, anticipated the award of a fixed-price requirements contract with a one-year base period and four, one-year options. Contracting Officer Statement of Facts (CO Statement) at 1-2. The solicitation sought hydrogen leak detectors, to include first production testing, as well as

technical data requirements and familiarization and orientation training for the devices.¹ Id. at 1.

The solicitation provided for award on a lowest-priced, technically acceptable basis. RFP at 44-45. As relevant to this protest, in order to be rated technically acceptable, offerors had to clearly demonstrate that their proposed product met each requirement set forth in an included Commercial Item Description (CID). Id. at 45; Agency Report (AR), Exh. 1, CID, July 30, 2010.

The agency received timely proposals from three offerors, including INFICON and Aerowing. CO Statement at 5. Following discussions, the agency received and evaluated the offerors' final proposal revisions. Id. at 5-7. All three offerors were rated technically acceptable, with Aerowing having the lowest evaluated price and INFICON having the second-lowest evaluated price. Id. at 6-7; AR, Exh. 30, Source Selection Decision Document. In accordance with the terms of the solicitation, the Air Force made award to Aerowing as the lowest-priced, technically acceptable offeror. Id.

On September 17, 2014, the agency notified offerors that award had been made to Aerowing. Protest at 2. INFICON timely filed the subject protest with this Office on September 29.

DISCUSSION

INFICON argues that the award to Aerowing was improper because the hydrogen leak detector proposed by Aerowing does not meet the mandatory technical specifications set forth in the CID. Specifically, the protester contends that the awardee's product cannot function as intended if used inside a fuel tank, which the protester argues the CID required. Protest at 2-3. INFICON also asserts that the awardee's product does not meet the CID specification requiring that the hydrogen leak detector be designed to prevent the intrusion of water and sand into critical operating components. Id. at 3. For the reasons discussed below, we deny the protest.²

¹ The hydrogen leak detectors required under the RFP are portable devices with handheld probes that are to be used to locate leaks in aircraft fuel tanks and other aircraft systems. Agency Report (AR), Exhibit (Exh.) 1, Commercial Item Description (CID), July 30, 2010, at 1.

² In its initial protest, INFICON also alleged that Aerowing's proposed product was not certified as compliant with certain safety standards, as required by the CID. Protest at 4. The agency responded to this argument in its report and the protester did not take issue with, or otherwise seek to rebut, the agency's response in its comments. Under such circumstances, we view this argument as abandoned.

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In support of its argument that Aerowing's proposed hydrogen leak detector does not meet the specifications of the CID, the protester asserts that the device cannot detect hydrogen at the required level of 1.0 parts per million when used inside a fuel tank. Protest at 3. The protester also asserts that Aerowing's product cannot withstand direct contact with corrosive fluids, to which it would be exposed when used inside a fuel tank. Id. INFICON acknowledges that the crux of its argument is that the solicitation required hydrogen leak detectors that could be used inside fuel tanks, and that the awardee's product cannot be used inside a fuel tank. INFICON does not challenge the ability of Aerowing's product to function as required if used to detect leaks from the outside of a fuel tank. Protester's Comments at 1-4. In response, the agency does not address whether the awardee's product could operate inside fuel tanks, but instead contends that the solicitation required hydrogen leak detectors that would be used on the exterior of fuel tanks, and that it evaluated proposals accordingly.³ Agency Memorandum of Law at 9.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

With regard to the intended use of the hydrogen leak detectors, the relevant section of the CID provided as follows:

1. SCOPE. This CID describes a portable hydrogen leak detector, which is used to determine the location of leaks in fuel tanks as well as other aircraft systems. By filling a fuel tank or container with hydrogen (the hydrogen acts as a tracer and is in a maximum concentration of 5% with 95% nitrogen), the hydrogen leak detector will enable aircraft maintainers to locate the origination

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Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

³ In its comments on the agency report, Aerowing contends that the hydrogen leak detector it proposed met the requirements of the solicitation, regardless of whether the device is used on the interior or exterior of a fuel tank. However, we need not consider whether the awardee's product would function inside of fuel tanks, as we find that the solicitation unambiguously required devices that would be used on the exterior of fuel tanks to test for leaks.

point(s) of the leak(s) as the hydrogen escapes into the atmosphere.

AR, Exh. 1, CID, July 30, 2010, at 1.

INFICON contends that the phrase “origination point(s)” in the above provision necessarily refers to the location where the fuel initially penetrates the interior wall of the tank, rather than the location where the fuel leaks out from the exterior wall of the tank.⁴ Protester’s Comments at 1-3. As such, the protester contends that the CID required hydrogen leak detectors that could be used inside a fuel tank, as this is the only way to locate an interior leak source with a hydrogen leak detector. INFICON’s interpretation of the CID is flawed, however, as it fails to read the phrase “origination point(s)” in the context of the whole provision in which it is contained. See Exploration Prods., B-279251.2, B-279251.3, June 1, 1998, 98-2 CPD ¶ 15 at 6-7 (denying protest where protester’s interpretation of solicitation was not consistent with relevant provisions when read in context).

As noted above, the CID provides that “[b]y filling a fuel tank or container with hydrogen (the hydrogen acts as a tracer and is in a maximum concentration of 5% with 95% nitrogen), the hydrogen leak detector will enable aircraft maintainers to locate the origination point(s) of the leak(s) as the hydrogen escapes into the atmosphere.” AR, Exh. 1, CID, July 30, 2010, at 1 (emphasis added). Thus, when read in context, and giving effect to all of the language in the solicitation, it is apparent that the CID describes a process whereby the hydrogen leak detector will be used on the exterior of a tank to detect hydrogen as it escapes into the atmosphere from the external leak source. Moreover, as the agency explains, and the protester does not dispute, the process for using a hydrogen leak detector on the inside of a fuel tank to locate an interior leak source involves forcing the hydrogen gas mixture into the tank through the external leak source and using the device to detect the gas as it enters the interior of the tank—a process that is inconsistent with the CID’s language indicating that the tank would be filled with hydrogen, which would then be detected as it escapes into the atmosphere. Declaration of Agency Equipment Specialist, December 19, 2014 at 1. Because the solicitation required hydrogen leak detectors that would detect leaks from a fuel tank’s exterior, not from the tank’s interior, the protester’s challenge is without a basis.⁵

⁴ The protester explains, and the agency does not dispute, that the location where fuel penetrates the interior of a fuel tank and the location where that fuel leaks out of the exterior wall of the tank often are not directly opposite each other, due the design of aircraft fuel tanks. Protester’s Comments at 3.

⁵ In support of its contention that “origination point(s)” could only refer to the source of a leak on the inside of a fuel tank, the protester cites to a document which is apparently a technical manual issued by the Air Force regarding the inspection and
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INFICON also argues that Aerowing's proposed product did not meet the CID specification requiring that the hydrogen leak detector be "designed to prevent the intrusion of water and sand into critical operating components." Protest at 3; AR, Exh. 1, CID, July 30, 2010, at 1. The agency contends that Aerowing's proposal demonstrated that its hydrogen leak detector complied with certain atmospheric explosive testing requirements, thereby demonstrating that the device was sealed and would not allow external gases to enter internal components. Contracting Office Response to GAO Questions, December 19, 2014, at 2. As explained by the agency, it concluded that the awardee's proposed product would also "be waterproof, drip proof and would provide protection from blowing dust and sand." Id.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. Visual Connections, LLC, B-407625, Dec. 31, 2012, 2013 CPD ¶ 18 at 3. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4. A protester's disagreement with the agency's conclusions does not render the evaluation unreasonable. Id.

Here, the record reflects that Aerowing's product was certified as meeting the atmospheric explosive testing requirement cited by the agency and based on such certification, the agency concluded that the product met the CID's design requirements. AR, Exh. 9, Aerowing Technical Proposal, at 6; Contracting Office Response to GAO Questions, December 19, 2014, at 2. We have no basis to conclude that the agency acted unreasonably in concluding that Aerowing's product met the CID specification regarding ingress protection.⁶

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repair of aircraft fuel tanks and cells. Protester's Comments at 2-4. INFICON's reliance on this document is misplaced, however, as the document was not included or referenced in the solicitation. As such, it provides no basis to contradict the unambiguous language of the CID. Moreover, while the technical manual defines and differentiates between a "leak source," which is on the inside of a fuel tank, and a "leak exit," which is on the exterior of a fuel tank, it does not in fact define the term "origination point(s)," which is the term at issue in the CID. Protester's Comments, Exh. 1, TO 1-1-3, Technical Manual, at 2. As discussed above, when read in context, the term "origination point(s)" in the CID referred to the location of a leak on the exterior of a fuel tank.

⁶ The protester's contention that the awardee's product did not meet the required ingress protection standards because the product does not have an adequate "IP

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The protest is denied.

Susan A. Poling
General Counsel

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class rating” is without merit. Protester’s Response to GAO Questions, December 22, 2014, at 2-3. The IP class rating referenced by the protester is not included in the CID specification regarding design. Rather, the CID provides, without reference to any specific technical standard, that the hydrogen leak detector must “be weatherproof and designed to prevent the intrusion of water and sand into critical operating components.” AR, Exh. 1, CID, July 30, 2010, at 1. Although the protester may believe that the IP class rating it references provides for greater intrusion protection, as discussed above, the agency’s determination that the awardee’s product met the CID’s design specification was reasonable and supported by the record.