

October 31, 2022

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SUBJECT: E-2022-1363BD Fortigate Firewall Upgrade Award Recommendation Protest

The Orange County Sanitation District (OC San) received an official protest from Xpert Solutions, Inc. on October 18, 2022. OC San reviewed the protest document and conducted its evaluation into the claim that the low bidder, NH&A LLC provided potentially invalid pricing that may not be honored, pricing that may not be in accordance with applicable laws and current practices of the manufacturer and is proposing equipment that may be used or from a Gray Market. OC San has concluded that none of these claims have merit. Therefore, OC San shall proceed with the intent to award NH&A LLC. as the vendor for the subject contract.

All affected parties shall be notified in writing of OC San's determination of the protest.



Ruth Zintzun
Purchasing Manager

Attachments: Award Recommendation Protest Letter – Xpert Solutions, Inc. October 18,
2022



Opposition to Bid Award

18 October 2022

Orange County Sanitation District
Attn: Purchasing Department (Jessica Vu)
10844 Ellis Avenue
Fountain Valley, CA 92708

Reference: Bid Invitation #E-2022-1363BD FortiGate Firewall Upgrade

Dear OCSan Procurement,

Xpert Solutions Inc. (Xpert) is respectfully submitting this statement of opposition to the protest submitted by the reseller from Florida (NH&A LLC) and we are submitting our protest to the award to NH&A LLC.

Xpert has the following concerns:

1. The pricing from the reseller from Florida (NH&A LLC) may not be in accordance with all applicable laws and current applicable policies of the manufacturer (Fortinet). This can be verified by NH&A LLC providing a valid Fortinet FTQ# which is dated before the bid closing.
2. The pricing from the reseller from Florida (NH&A LLC) is very likely invalid and may not be able to be honored by NH&A LLC. This concern has been confirmed by the equipment Manufacturer (Fortinet).
3. The proposed equipment from the reseller from Florida (NH&A LLC) may be from the Gray Market or may be used equipment despite the reseller (NH&A LLC) being an authorized reseller. This is also the concern of the Manufacturer (Fortinet).

The terms of the invitation to bid state in section 2.12 Price Confirmation – “Prior to the award of the Contract, the apparent low Bidder will need to confirm that each line item is at the correct pricing.” And in section 3.13.2. “The Vendor confirms to have sourced all products submitted in this offer from the listed manufacturer in Exhibit A through Authorized Channels only, in accordance with all applicable laws and current applicable policies of the manufacturer at the time of purchase.”


Xpert believes the pricing submitted by NH&A LLC is not in accordance with all applicable laws and current applicable policies of the manufacturer. Xpert and Fortinet are asking OCSan to have the reseller (NH&A LLC) provide to OCSan and to Fortinet the valid FTQ quote number from Fortinet to prove that a. the equipment is not from the gray market and not used equipment and b. it will prove whether or not NH&A LLC has authorized pricing from Fortinet.

The terms of the invitation to bid also state in section 2.2 Bid Pricing – “All pricing and evaluative material contained in submitted bids must be valid through the Contract term. At no time shall the bids be altered.” Xpert and Fortinet have reason to believe that the pricing submitted by NH&A LLC is invalid. Even though the reseller (NH&A LLC) is an authorized Fortinet reseller, the believes the equipment that NH&A LLC may be attempting to sell to OCSan equipment from the gray market or possibly used equipment.

Xpert is requesting that OCSan ask NH&A LLC to provide to OCSan and to Fortinet a valid FTQ quote number which is authorized by Fortinet. If NH&A LLC cannot provide to OCSan and to Fortinet the valid FTQ quote number from Fortinet, then OCSan is a grave risk of sourcing gray market and/or used equipment.

Finally, Xpert believes we have submitted the lowest authorized pricing to OCSan and that the bid should be awarded to Xpert.

Sincerely,


Anthony L. Jones
President
Xpert Solutions, Inc.

Xpert Solutions, Inc.

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