



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Vision Blocks, Inc.

File: B-281246

Date: January 14, 1999

Edward J. Kinberg, Esq., for the protester.

David R. Hazelton, Esq., Latham & Watkins, for Miller-Holzwarth, Inc., an intervenor.

Gail Booth, Esq., and Walter R. Pierce, Esq., Defense Logistics Agency, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably waived first article test requirement for a firm where the firm had successfully supplied production quantities of similar items to the government under a previous contract and the firm's first article was tested and approved under that contract to the same military specification that applies in the current procurement.

DECISION

Vision Blocks, Inc. (VBI) protests the Defense Logistics Agency's (DLA) decision to waive first article testing (FAT) for Miller-Holzwarth, Inc. (MHI) under request for proposals (RFP) No. SPO750-98-R-2022, for direct vision blocks.

We deny the protest.

Issued on April 2, 1998, by the Defense Supply Center Columbus (DSCC) the RFP solicited offers for supplying 1,797 direct vision blocks, national stock number 2510-00-630-0790 (hereinafter referred to as No. 0790), for use on the M88 recovery vehicle.¹ RFP at 1, 3-4; Contracting Officer's Report at 1. The RFP required the selected contractor to provide a first article for testing and a FAT report for approval by the agency. RFP §§ I43(a), (b). The RFP also provided that the agency

¹A vision block is a block made up of layers of glass cemented together with clear adhesive. A vision block is positioned into a slot in the driver's compartment of a vehicle to allow the driver to see out while preventing projectiles from small weapons from entering the vehicle. Contracting Officer's Report at 1.

could waive the FAT requirement where an offeror had previously furnished identical or similar supplies to the government. RFP § I43(h).

The protester and MHI submitted offers and requested waiver of FAT; after determining that each had previously performed FAT and furnished identical or similar vision blocks to the Army, the agency waived the requirement for both firms. Contracting Officer's Report at 1. After a comparative assessment of the offers, the contracting officer determined that MHI's offer was lower-priced than VBI's and that MHI's offer represented the best value. Letter from DLA Regional Counsel to General Counsel of the General Accounting Office at 2 (Oct. 21, 1998).

On September 17, VBI's president was informed by the contracting officer of the agency's decision to waive the FAT requirement for MHI. Protest at 2. By letter of September 21, VBI protested to the contracting agency the decision to waive FAT for MHI. Contracting Officer's Report at 2. The contracting officer denied VBI's protest on September 30, explaining that MHI had passed the FAT requirement for a similar item it previously supplied to the government.² Id. Shortly thereafter, VBI filed this protest with our Office.³

The protester alleges that DLA had no reasonable basis for determining that the vision blocks MHI previously supplied to the Army were "similar or identical" to the parts being purchased in this procurement. Protest at 3. Therefore, VBI contends that the agency improperly waived the FAT requirement for MHI. Id.

An agency's decision to waive a FAT requirement is largely discretionary since the requirement is for the protection and benefit of the government, and our Office will not disturb that decision unless we find it to be unreasonable. Marine Instrument Co., B-241292.3, Mar. 22, 1991, 91-1 CPD ¶ 317 at 3. Based upon our review of the record, we find that the agency reasonably waived the FAT requirement for MHI.

In its request for waiver of the FAT requirement, MHI stated that it had manufactured three vision blocks that were similar in configuration to the vision blocks being purchased by DLA. Letter from the President of MHI to DSSC at 1 (May 1, 1998). MHI also stated that it had successfully completed FAT for two of the three similar vision blocks, and MHI provided a copy of a DLA letter (dated

²MHI manufactured a vision block, part No. [deleted], for the Army under contract No. DAAE07-90-C-1197. Letter from the President of MHI to DSSC at 1 (May 1, 1998); Contracting Officer's Report at 2.

³Award has been held in abeyance pending our resolution of the protest. Contracting Officer's Report at 2.

December 18, 1998) approving MHI's FAT report.⁴ Id., Attachment, at 1. MHI also listed four contracts that it had been awarded by the Army for the manufacture of vision blocks. Id. at 2.

Here, DLA waived FAT for MHI primarily on the basis of the Army's previous approval of MHI's FAT report for vision block No. [deleted]. Contracting Officer's Report at 2. The agency was aware that there were some differences between vision block No. [deleted] and vision block No. 0790, but the agency considered them to be "minor differences in characteristics and construction" and determined that vision block No. [deleted] was "still very similar to the item solicited as it has the same critical characteristics." Id. Among other things, DLA determined that the two types of vision blocks were very similar and waived FAT for MHI because: (1) the FAT for vision block No. [deleted] was conducted in accord with the same military specification that is applicable to vision block No. 0790; (2) both types of vision blocks are Type 1 (i.e., steel cased); (3) both types of vision blocks are Class 2 (i.e., composite-laminated, glass-plastic construction); (4) both types of vision blocks are classified as Duty A (i.e., a specific degree of ballistic resistance). Id. at 3; Statement of DSCC-LECA Section Chief at 1 (Nov. 4, 1998). Even though the vision blocks differ in shape and are mounted differently, the agency believed that MHI had the processes, equipment, and experience (i.e., over 35 years of experience in producing optical products) to shape and mount the vision blocks as required by DSCC. Statement of DSCC-LECA Section Chief at 1 (Nov. 4, 1998); Statement of [deleted], DSCC Quality Assurance Specialist at 1 (Nov. 2, 1998).

In addition to the previous approval of MHI's FAT, the record shows that MHI successfully completed performance of the Army contract, manufacturing and furnishing more than [deleted] vision blocks, and the Army reported no deficiencies on any of the vision blocks it received. Contracting Officer's Report at 2; Army Report on Contract No. DAAE07-90-C-1197 at 3, 5. Furthermore, our visual examination of the two types of vision blocks (VBI provided a sample of each type to our Office) reveals no basis for disputing or finding unreasonable DLA's determination that the vision blocks being procured by DLA were similar to those previously supplied to the Army. In these circumstances, we think that the agency reasonably determined that MHI had previously manufactured a similar vision block under the Army contract and, since MHI's FAT under that Army contract was approved to the same military specification that would be applied by DLA in this procurement, the agency also reasonably waived FAT for MHI as allowed under the RFP. Aero Tube and Connector Co., B-216280, Dec. 11, 1984, 84-2 CPD ¶ 650 at 2; see also Marine Instrument Co., supra.

⁴The Army approved the FAT report but, since DLA was administering the contract for the Army, the letter communicating that approval to the contractor was signed by a DLA official and was on DLA letterhead.

In its November 16, 1998, comments on the agency's report, VBI alleged for the first time in our Office a number of specific differences between the vision block MHI previously produced for the Army and the vision block being acquired by DLA. Protester Reply to Agency Report at 7-8. These allegations are untimely because they were known to VBI when it filed its initial protest in our Office, but the specific differences were not alleged until VBI commented on the DLA report more than 5 weeks later.⁵ Where, as here, a protester raises a broad ground of protest in its initial submission, but fails to provide any detail on the protest ground until later, so that a further response from the agency would be needed for an objective review of the matter, we decline to consider such protest grounds because they are presented in a piecemeal fashion, which is disruptive to the prompt and orderly resolution of the protest. Management Sys. Applications, Inc., B-259628, B-259628.2, Apr. 13, 1995, 95-1 CPD ¶ 216 at 11.

In addition, VBI asserts in its comments that MHI's previously-manufactured vision block used a different "potting" material and bonding agent. Protester Reply to Agency Report at 2-3. However, VBI did not provide any detailed explanation of why these alleged differences are significant, or why they make the two types of vision blocks so dissimilar that the agency determination to waive FAT was unreasonable.⁶ Even if true, without additional explanation, these allegations provide no basis to overturn DLA's decision to waive FAT. Thus, the allegations do not provide sufficient bases for protest and are dismissed. Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4), 21.1(i) (1998).

The protest is denied.

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⁵It is evident that the alleged differences were known to VBI before it filed its protest in our Office, since VBI states that it has been manufacturing both vision blocks for over 10 years and since VBI had earlier raised the differences with DLA. Declaration of the President of VBI, at 4 (Nov. 16, 1998); Letter from VBI Counsel to DLA Counsel, at 1-2 (Oct. 1, 1998).

⁶Regarding potting material, DLA states that the Army has approved MHI's potting method as an improvement that eliminates yellowing and degrading of the optical bonds.