DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220136 **DATE:** December 24, 1985

MATTER OF: BRD Associates

DIGEST:

1. Contracting agency's determination to reject protester's quotation was not unreasonable where request for quotations required polypropylene fabric, but protester's offer of olefin fabric and subsequent clarification left doubt that polypropylene fabric would be furnished.

2. Failure to complete in quotation sections on equal opportunity, affirmative action, and price representation is not significant because quotation price is below dollar amount that makes equal opportunity section applicable and affirmative action section and price representation section are only informational.

3. Issues as to contractor's rapid performance under contract, agency's delay in informing protester of contract award and alleged factual errors by agency in reporting dates and times of phone calls to protester will not be considered, since issues do not affect the validity of the award.

BRD Associates (BRD) protests the award of a purchase order for wrapped edge polypropylene fabric panels to Performance Contracting, Inc. (Performance), under request for quotations (RFQ) No. N66001-85-Q-0199/EF, issued by the Naval Ocean Systems Center, San Diego, California (Navy).

BRD essentially questions the Navy's technical evaluation of its quotation. We deny BRD's protest.

It is not the function of our Office to evaluate technical submissions made to the government by competing firms. See Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299. The determination of the merits of these technical submissions is the responsibility of the contracting agency which has considerable discretion in making that determination. Consequently, we will not question an

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agency's technical evaluation unless the protester shows that the agency's judgment was unreasonable or in violation of the laws and regulations. See Science Information Services, Inc., B-207149.2, Nov. 29, 1982, 82-2 C.P.D. ¶ 477. Based on our review of the record, discussed below, BRD has not shown that the Navy's technical evaluation of its proposal was unreasonable.

The RFQ states that, "if other than brand name is quoted, furnish specification sheet and the brand name for technical evaluation." However, the RFQ inadvertently omitted a brand name. Nevertheless, BRD submitted a sample and a specification sheet for evaluation. The Navy's technical evaluator noted that BRD described its proposed fabric as having a "wrap" of "continuous filament olefin" and having a "shute" of "continuous filament olefin with nylon." Given this description, the evaluator concluded that BRD's sample did not conform to the requirement for polypropylene fabric.

The contracting officer attempted to clarify the technical nonacceptability by phoning BRD and requesting clarification as to the chemical properties/composition of the sample submitted. The contracting officer reports that BRD stated that its sample was 100 percent polypropylene, because olefin and polypropylene are the same thing--a technical statement that the Navy's technician disputes. The Navy decided to reject BRD's low quotation because the "BRD submittals did not clearly show that BRD's material met the stated salient characteristics." The contracting officer awarded the contract to Performance, the next lowest technically acceptable quoter. Performance completed delivery of the fabric about a month later.

BRD notes that the information sheet which it submitted to the Navy clearly stated that its fabric was polypropylene. However, BRD does not deny that it also proposed an olefin wrap and an olefin with nylon shute.

As to the statement about olefin, BRD does not deny that, at the time the contracting officer sought technical clarification, BRD informed the Navy that olefin and polypropylene are the same thing--a statement which BRD implicitly concedes is not precise, for BRD now admits that not all olefins are polypropylenes. Consequently, BRD has not shown that the Navy unreasonably considered the company's explanation of its quotation to be, at a minimum, ambiguous as to BRD's actual intent to furnish polypropylene wrap instead of another olefin material which was not

polypropylene. Further, given BRD's insistence on affirming its ambiguous statement at the time the awardee was being determined, we cannot conclude that the Navy unreasonably decided to forego further questioning of BRD about the fabric BRD was actually going to furnish.

As to BRD's statement about a nylon shute, BRD argues that the RFQ:

> "did not indicate 100 percent polypropylene. . . . That is a term . . . used exclusively by the Owens Corning specification sheets. . . ."

Nevertheless, since the RFQ expressly stipulates that the fabric be polypropylene, the reasonable inference from the RFQ requirement is that only polypropylene fabric is to be proposed--contrary to what BRD proposed for the shute.

Given the above analysis, we cannot conclude that BRD has shown that the Navy's technical evaluation of its quotation was unreasonable.

Besides this main issue, BRD has noted in its comments on the Navy's report that in its quotation Performance did not complete the sections on price representation, equal opportunity and affirmative action.

Performance's quotation of $22,320 is not subject to the equal opportunity section. The section states that it is applicable to offers of $50,000 or more. Thus, Performance was not required to complete the section.

As to the affirmative action section, it is merely for informational purposes (representations regarding the quoter's previous contracts subject to affirmative action requirements and current affirmative action programs on file) and does not purport to bind the quoter to any course of action or other obligation. Consequently, the section may be completed after quotations are received. Boringuen Bus Service, Inc., B-190395, Apr. 17, 1978, 78-1 C.P.D. ¶ 292.

As to Performance's failure to complete the price representation section (which asks whether the quotation price is based on a published price, price charged other customers or other basis), we do not consider this omission to be significant, since the procurement is competitive and the section is also for informational purposes.

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Finally, BRD raises other protest issues, namely: (1) the contractor's "rapid delivery response" under the contract; (2) the delay in receiving notice of award until nearly 2 weeks after award; and (3) alleged errors as to dates and times of the Navy's reported phone calls to the protester. However, none of these issues, even if resolved in the protester's favor, affect the validity of the award. Consequently, we will not consider these issues.

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General Counsel