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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: W. H. Smith Hardware Company

File: B-228576

Date: February 4, 1988

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### DIGEST

1. Protest that offer was unacceptable because the item offered is not a standard commercial product as required by the solicitation specifications is denied where offer is acceptable on its face.
2. General Accounting Office does not review contracting officers' affirmative determinations of responsibility absent a showing of fraud or bad faith or that definitive responsibility criteria have not been applied.

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### DECISION

W. H. Smith Hardware Company protests the award of a contract for 325 quick-acting valve assemblies to HoseCo Inc. under Defense Construction Supply Center (DCSC) request for proposals (RFP) No. DLA700-87-R-1476, a total small business set-aside. Smith contends that HoseCo's offer was unacceptable because HoseCo intends to supply a ball valve that does not meet the specification requirements in that the valve to be offered is of the wrong type and is not a standard commercial product.

We deny the protest in part and dismiss it in part.

The RFP only requested prices for the valve assemblies; it did not require offerors to submit technical proposals or any other information. The major component of the assembly is a 3-inch quick-acting ball valve. The RFP provided that the ball valve was to conform to federal specification WW-V-35C. The specification, which was not included in the RFP package, provided that the valve shall be the "manufacturer's standard commercial product."

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Ten offers were received by the June 1, 1987, closing date. HoseCo submitted the low offer at \$234.32 per assembly. A preaward survey was conducted on HoseCo, which resulted in the conclusion that the firm understood the specification requirements and had the capacity to supply the items. The survey recommended that HoseCo be awarded the contract. Accordingly, on July 3 the unsuccessful offerors, including the protester, were given preaward notice of the intent to make award to HoseCo.

Smith, in response to this notice, protested HoseCo's status as a small business contending that HoseCo intended to supply ball valves manufactured by a large business of castings and other components from the Far East. Smith also contended that award to HoseCo would violate the Buy American Act and argued that HoseCo would not meet the requirements of the federal specification referenced in the RFP.

The contracting officer referred the protest to the Small Business Administration (SBA). SBA, after reviewing the matter, denied the protest concluding that HoseCo qualified as a small business manufacturer. According to the SBA decision, HoseCo proposed to purchase the necessary component parts from several small business subcontractors and from one large business subcontractor. SBA found that HoseCo would assemble the parts, test, warrant, and ship the assembly. SBA did not consider the Buy American Act issue. Subsequently, the contracting officer denied that portion of the protest concerning the Buy American Act and made award to HoseCo.

Smith contends that the information contained in the SBA decision shows that, while HoseCo took no exception to the RFP requirements in its offer, that firm does not intend to comply with the requirements found in the federal specification concerning the type of valve to be supplied and its commerciality. This, Smith contends, renders HoseCo's offer unacceptable. Smith's first argument is based on information in the SBA opinion which allegedly shows that the awardee will supply a nonconforming valve. The SBA opinion stated that HoseCo will purchase a number of components including stems and nuts. The protester argues that a conforming valve is not held together with stems and nuts. Second, since the SBA opinion shows that HoseCo will not manufacture the valve, but may assemble components, Smith concludes that the valve offered cannot be HoseCo's standard commercial product.

Where as here, an offeror takes no exception in its offer to the solicitation requirements it is bound to comply with the requirements. Thus, we have no basis upon which to object to the agency's conclusion that HoseCo's offer was

technically acceptable and deny the protest to the extent the protester argues that the HoseCo offer should have been rejected as unacceptable. Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 CPD ¶ 383. To the extent that Smith argues that the information revealed prior to the award indicates that despite HoseCo's compliant offer the firm will not supply valves in accordance with the specification requirements--Smith is challenging the contracting officer's determination that HoseCo is a responsible firm capable of performing as required.

We will not review a contracting officer's affirmative responsibility determination absent a showing that it was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1987); RepcO, Inc., B-225496.3, Sept. 18, 1987, 87-2 CPD ¶ 272. We see no basis to review the contracting officer's determination here, since Smith has not alleged bad faith or fraud and, as discussed below, the relevant provisions of federal specification WW-V-35C do not constitute definitive responsibility criteria.

Definitive responsibility criteria are objective standards established by a contracting agency in a particular procurement to measure the offeror's ability to perform the contract. C.R. Daniels, Inc., B-221313, Apr. 22, 1986, 86-1 CPD ¶ 390. Such criteria in effect represent the agency's judgment that an offeror's ability to perform in accordance with the specifications for that procurement must be measured not only against the traditional and subjectively evaluated factors, such as adequate facilities and financial resources, but also against more specific requirements, compliance with which at least in part can be determined objectively. Zero Mfg.Co.--Request for Reconsideration, B-224923.2, Oct. 28, 1986, 86-2 ¶ 485.

Definitive responsibility criteria thus concern an offeror's eligibility for award by limiting the class of offerors to those meeting specified qualitative and quantitative qualifications that the agency determines are necessary for adequate contract performance. Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 CPD ¶ 403. Such criteria do not involve an offeror's performance obligations under the contract. Hettich GmbH and Co. KG, B-224267, Oct. 24, 1986, 86-2 CPD ¶ 457. Where, as here, a requirement for commercial availability or a standard commercial product is merely a part of the general specifications for design and performance, it is a performance requirement going only to an offeror's performance obligations. As such, the requirement, since it does not establish any precondition for award, simply raises an issue that is for the

contracting officer's consideration in making his determination of responsibility. Tenavision, Inc., B-216274, Apr. 15, 1985, 85-1 CPD ¶ 427. As far as the construction of the valve is concerned, that too is clearly a specification performance requirement. Since the contracting officer has affirmatively determined HoseCo's responsibility, we dismiss this portion of the protest.

The protest is denied in part and dismissed in part.

 *James F. Hinchman*  
James F. Hinchman  
General Counsel.