



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Optical Cable Corporation

**File:** B-232030

**Date:** October 24, 1988

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### DIGEST

1. Protest challenging agency determination that an alternate item to the approved source item was technically acceptable is denied since agency has primary responsibility for establishing procedures to determine product acceptability and for determining whether item will satisfy government's minimum needs, and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

2. Although the awardee did not include the entire solicitation in its initial proposal, the awardee's initial proposal constituted a valid offer since it included all of the material terms of the solicitation, technical information and signed certifications and representations.

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### DECISION

Optical Cable Corporation protests the award of a contract to Siecor Corp. under request for proposals (RFP) No. F04606-88-R-27584 issued by the Department of the Air Force, Sacramento Air Logistics Center, for fiber optic cable. We deny the protest.

The solicitation identified Optical as the only approved source for the fiber optic cable. The solicitation stated that although the government did not have an adequate data package for the cable, it would consider offers from unapproved sources if it could make a determination prior to award based on data submitted by the source offering an alternate product that the item meets the government's requirements.

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Five firms responded to the solicitation. Three of the firms, including Siecor, offered Siecor cable. The Air Force evaluated the data submitted by Siecor and concluded its cable was technically acceptable and approved it as an alternate source. Accordingly, the Air Force awarded the contract to Siecor as the low offeror at \$.99 per foot. The protester offered a price of \$1.22 per foot for its cable.

Optical argues that the technical evaluation performed by the Air Force based on data submitted by Siecor was inadequate. The protester argues that its cable is the standard which alternate sources must meet. In this regard, it points out that there are significant technical differences between its cable and the Siecor cable, citing a difference in the outside diameter of the cable. Also, Optical complains that the Air Force's determination should have been based on a physical examination of an actual sample of the Siecor cable.

The contracting agency has the primary responsibility for determining its minimum needs and for determining whether an offered item will satisfy those needs. Rhine Air, B-226907, July 29, 1987, 87-2 CPD ¶ 110. Consistent with this principle, the responsibility for establishing procedures necessary to determine product acceptability rests with the contracting agency. See Ingersoll-Rand Co., et al., Dec. 22, 1986, 86-2 CPD ¶ 701. We will not question the agency's decision to accept an alternate offer in an approved source procurement unless the decision was tantamount to fraud or willful misconduct. Sony Corp. of America, 66 Comp. Gen. 286, (1987), 87-1 CPD ¶ 212.

Here, the record shows that the agency used the data submitted by Siecor to compare characteristics of the cable it offered to Optical's approved item. This method of evaluation is consistent with the solicitation terms, which did not specify that samples needed to be submitted and which clearly indicated that the evaluation would be based on data submitted by the offeror. The only requirement in the solicitation is that the product meet the agency's needs; the requirement is not as the protester argues that it be identical to the approved item. While the protester questions how the Siecor cable can be equal to its product, the agency has concluded that it can use the Siecor cable despite its different outside diameter and we have no basis to conclude the agency's technical judgment that the smaller diameter cable is sufficient to meet its needs was either the result of fraud or willful misconduct on the part of the agency evaluators.

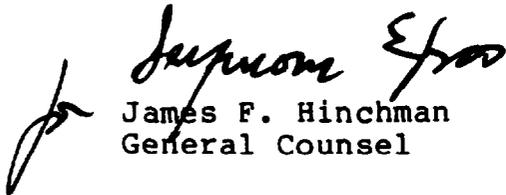
Finally, the protester complains that only part of Siecor's proposal was submitted on the closing date and that Siecor did not submit its technical information until July 20, approximately 3 weeks after the contract was awarded. Optical suggests that Siecor may not have submitted a timely proposal.

We disagree. The record shows that Siecor submitted the first page of the RFP with the prices, technical information and signed certifications and representations by the closing date for receipt of proposals. Included in the protester's technical information was a statement that the cable would be shipped within 5 to 7 weeks after receipt of the order which complied with the delivery requirement set forth in the RFP.

Since Siecor's proposal as originally submitted made reference to the price, quantity, quality and delivery terms by which the parties would be bound under any resultant contract, it was sufficient as originally submitted. Moduform, Inc., B-214582.2, June 19, 1984, 84-1 CPD ¶ 641.

Siecor's post-award submissions of July 20, consisting of technical data and a sample do not affect the propriety of the award. The technical data is a duplicate of part of the data Siecor submitted in its proposal of June 13, and used by Air Force in determining that Siecor's cable met the government's requirements. A physical sample was not required by the solicitation, and the fact that the awardee chose to submit a sample after award is irrelevant and has no bearing on the Air Force's decision to award the contract to Siecor.

The protest is denied.

  
James F. Hinchman  
General Counsel