Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Tennier Industries, Inc.

File: B-252338

Date: June 18, 1993

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C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation designated either of two materials as acceptable in manufacture of sleeping bags, assertion that material offered by awardee should not have been considered acceptable constitutes untimely challenge to solicitation provisions; where testing resulted in agency determination that material met operational needs, the fact that different tests produced different results does not establish that agency determination was unreasonable.

2. Despite solicitation language indicating that evaluators would give preference to proposals for "high quality product," protester's assertion that its proposal deserved a higher rating does not show that evaluation was unreasonable, absent any showing that protester proposed a product that did any more than meet minimum requirements of specifications.

3. Where solicitation required letters of commitment from suppliers, agency was not unreasonable in considering a letter of commitment from a subsidiary of the awardee as valid for purposes of the solicitation.

4. Requirement that offerors list their proposed suppliers of textiles and cloth, for the purpose of allowing the agency to ensure that prime contractors did not subcontract with debarred or suspended firms, relates to responsibility, not technical acceptability; protest that failure to list sole-source supplier of required continuous filament batting requires rejection of proposal is denied where there is no

evidence that awardee meant to take material exception to requirement.

5. Evaluation of past performance was reasonable where (1) with respect to awardee, agency reasonably concluded that awardee's recent performance indicated that the rating of "marginally acceptable" fell within the high range of that rating; and (2) with respect to protester, despite protester's arguments that variation in quantity clause excuses late deliveries where quantities do not exceed specified percentage, agency's determination that late deliveries demonstrated a less than acceptable commitment to customer satisfaction and delivery schedules, and narrative assessment indicating that protester's past performance was marginally acceptable, although falling within the high range of that rating, were reasonable and consistent with the solicitation.

6. Where protester who obtained access to awardee's proposal under a protective order issued by the General Accounting Office does not identify any aspects of that proposal which are priced unrealistically or indicate a lack of understanding of requirements, protester has not shown that the agency should have withheld award under a solicitation for a fixed-price contract based on concerns over price realism.

7. Chief concern of the General Accounting Office in reviewing the application of adjectival rating scheme is whether the method in question gave the contracting officer a clear understanding of the relative merit of proposals, and protest against use of adjectival rating scheme is denied where that scheme, as supported by narrative assessments, reasonably conveyed a proper appreciation of the strengths and weaknesses of individual proposals.

8. Where solicitation stated that in the event technical and cost proposals were essentially equal, agency would consider small business status of offerors in selection decision, agency was not obligated to consider protester's small business status where the protester's proposal was priced more than one-third higher than the awardee's proposal, which evaluators reasonably rated as essentially equal in technical merit.

9. Where the General Accounting Office concludes that the evaluation and the selection decision were reasonable, supported by the record, and consistent with the factors stated in the solicitation, contention that agency had a

bias toward proposals using alternate material is without merit.

DECISION

Tennier Industries, Inc. protests the award of a contract under request for proposals (RFP) No. DLA100-91-R-0574, issued by the Defense Personnel Support Center (DPSC) for extreme cold weather sleeping systems (ECWSS).[1] The protester argues that the evaluation and the award decision were unreasonable and inconsistent with the factors stated in the solicitation.

We deny the protest.

BACKGROUND

On April 8, 1992, the agency issued the solicitation for a firm, fixed-price, indefinite quantity contract for a minimum quantity of 27,897 ECWSS, with a maximum quantity of 80,210 systems and options for an additional 31,440 systems. The solicitation provided for award to the offeror whose offer was most advantageous to the government--price, technical quality and other factors considered. Technical quality was more important than price, but as proposals became more equal in technical merit, cost or price would become more important. In the event that both technical merit and evaluated price were "essentially equal," the solicitation provided for consideration of factors such as small and small disadvantaged business status and location in a labor surplus area.

The solicitation set out three evaluation factors of equal importance, as follows: manufacturing plan (demonstrating ability to furnish an item meeting specifications); quality assurance plan (ability to furnish an item meeting all quality requirements of the item specification and solicitation); and experience/past performance. Six subfactors within the manufacturing plan factor were of equal importance: manufacturing procedures (including a list of operations and numbers of operators required, and proposed and historic actual figures for "standard allowed minutes"); production scheduling (flow chart, phase-in, subcontracting); materials (procedures for acquisition and control of materials, and selection and surveillance of suppliers, including letters of commitment from suppliers); production

[1]The system is a lightweight sleeping bag with improved protection against cold and moisture.

personnel (number, skill level, and availability); production equipment (profile of major plant equipment); and manufacturing plan (organizational structure, key personnel).

The solicitation provided for evaluation of past performance in two ways: first, to evaluate the "credibility of the offeror's proposal," the agency would treat a record of marginal or unacceptable past performance as an indication that the offeror's representations were "less than reliable"; second, to evaluate the "relative capability" of offerors, the agency would more favorably evaluate an offeror with "an exceptional record of past performance." The solicitation defined past performance as follows:

> "[T]he offeror's record of conforming to [g]overnment specification requirements and to contract schedules, including the administrative aspects of performance; the offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business-like concern for the interests of the customer."

The solicitation provided for consideration of price realism, defined as an offeror's demonstration "that the proposed cost or price provides an adequate reflection of its understanding of the requirements of the contract." The agency also advised offerors that the business (price) proposal would be evaluated separately from the technical proposal.

The item description, section C of the solicitation, contained two specifications at issue in this protest. The ECWSS includes a waterproof "bivy cover," including waterproof and moisture vapor permeable laminated cloth in accordance with MIL-C-44187B; paragraph 3.3.2 of MIL-C-44187B lists two acceptable materials: microporous polytetrafluoroethylene film, known as Gore-Tex and manufactured by W. L. Gore and Associates; and polyolefin microporous membrane fully saturated with a hydrophilic urethane, developed by the 3M Corporation and known as Thintech.[2] The solicitation also required use of unquilted polyester batting in accordance with MIL-B-41826G; that specification lists seven classes of unquilted polyester batting, but drawing No. 22-2-43, provided with the solicitation, specifically required the use of class 12--continuous filament batting.

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[2]Thintech is a camouflage cloth laminate based on the membrane, but the term also applies to the membrane.

DPSC clause 52.209-9P05, which appeared in section K of the RFP, required offerors to identify sources for cloth/textile components, the name of the manufacturer, and its location. Agency regulations provide for use of this clause to prevent offerors from obtaining such components from debarred or suspended firms; the regulations direct contracting officers to notify any firm that proposes a debarred or suspended supplier and to provide that firm a "reasonable period of time to locate another source" prior to award. DPSC clause 52.209-9P05 allows offerors to substitute suppliers prior to award "where time permits," upon written approval by the contracting officer.

The agency received five proposals by June 4, the date set for receipt of initial proposals, and submitted them for technical review, which resulted in the elimination of one offer from the competitive range. By letters dated September 25, the agency initiated discussions with the remaining four offerors, requesting the submission of revised proposals by October 7. After reviewing the revised proposals, the agency determined that all four proposals were marginally acceptable and requested best and final offers (BAFO), which it received on November 24.

Although all four proposals were rated equal in technical merit,[3] the contracting officer determined that the proposal of the second low offeror, Isratex, Inc., was worth the slight additional cost, $179.40 per system versus the low price of $171. The contracting officer concluded that while the protester had experience with production of sleeping bags, Isratex had experience with more complicated items, and although the protester's past performance record was as good if not better than the awardee's, there was no basis for paying the 33-percent price premium ($239.34, or $59.94 more per system) associated with Tennier's proposal. On February 5, 1993, the agency awarded a contract to Isratex, and this protest followed.

TECHNICAL EVALUATION

The protester contends that the evaluation was unreasonable and that the agency failed to appreciate the superiority of its proposal in the three factors of manufacturing plan,

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[3]All four offerors received an overall rating of marginally acceptable. Three of the four offerors, including the protester, the awardee, and the low price offeror, received acceptable ratings under the first two factors, manufacturing plan and quality assurance plan; all four offerors received marginally acceptable ratings for past performance.

quality assurance plan, and past performance. Further, the protester asserts that the agency failed to consider significant deficiencies in the awardee's proposal. The failure to evaluate proposals reasonably and consistently with the factors listed in the solicitation resulted, the protester argues, in a selection decision contrary to the solicitation's emphasis on technical quality.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria. SeaSpace, 70 Comp. Gen. 268 (1991), 91-1 CPD ¶ 179. The evaluation of the proposals here appears reasonable and consistent with the criteria listed in the solicitation.

The solicitation evaluation scheme provided for award of a "highly acceptable" rating as follows:

> "The manufacturing plan . . . may offer exceptional features which positively impact the offeror's probability for successful performance . . . rating of this magnitude indicates a high quality product fully meeting the specification/commercial product description and indicates high probability of successful performance with no deficiencies noted."

The protester essentially argues that the Gore-Tex cloth which it proposed will produce a higher quality product than the Thintech fabric that the awardee proposes. The protester supplies evidence of testing failures indicating that Thintech will not meet requirements related to camouflage color shade, membrane damage from heat during application of seam sealing tape, and water leakage. While acknowledging that the solicitation specifically provided that the agency would consider Thintech an acceptable material for the bivy cover, the protester argues that the designation of a material as acceptable does not relieve the agency of the obligation to determine whether the product meets specifications in the context of a particular procurement.

To the extent that Tennier challenges the acceptability of the Thintech product, Tennier's arguments essentially constitute an untimely challenge to the terms of the solicitation, which expressly provided that the agency had determined Thintech an acceptable product for purposes of the procurement. Our Bid Protest Regulations specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to the time

set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1993). Tennier's protest of the acceptability of the Thintech product, filed 8 months after the receipt of initial proposals and nearly 3 months after the receipt of BAFOs, is therefore untimely.[4]

In any event, the agency explains that defining the requirements and testing necessary to determine the acceptability of various materials for use in the ECWSS is the responsibility of the U.S. Army's Natick Laboratories. The agency has advised our Office that notwithstanding a continuing controversy over the relative merits of Gore-Tex and Thintech, Natick maintains that Thintech will meet operational requirements; the agency has provided evidence of test results supporting the acceptability of Thintech and concluding that there are no significant differences between the Thintech and Gore-Tex material.[5] In Barrier-Wear, B-240563, Nov. 23, 1990, 90-2 CPD ¶ 421, a protester made similar allegations about the failure of Gore-Tex material to meet requirements of the same military specification; we concluded, as we do here, that the fact that different tests produce different results is not enough to demonstrate that the agency's technical judgment was unreasonable.

To the extent that Tennier argues that Isratex's proposal should have been rated lower than Tennier's proposal because of the alleged inferiority of Thintech relative to Gore-Tex, this argument is without merit. The agency points out that despite the general solicitation language related to the quality of the product, the solicitation made no provision

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[4]In its initial protest, Tennier states that it first became aware of the results of this testing, which occurred in 1991, on February 9, 1993, after contract award. There are indications in the record, however, that the controversy over use of Thintech as an alternative to Gore-Tex material is a long-running one and that Tennier's arguments are not new ones; where the timeliness of a protest is based on the receipt of documents so old, a protester must show that it has at least diligently pursued the information. Continental Airlines, Inc., B-246897.3, Jan. 22, 1992, 92-1 CPD ¶ 105; see also Liebert Corp., 70 Comp. Gen 448 (1991), 91-1 CPD ¶ 413.

[5]Results of tests from the Cold Regions Test Center revealed a tendency for parkas using alternative materials, including Thintech, to delaminate, but were inconclusive whether this was a defect with the material or a defect in manufacture of the parka. The tests indicated that Thintech was in some respects superior to the Gore-Tex material, although other tests indicated a variation in quality of the material among production runs.

for evaluation of differences among the proposed materials; the materials subfactor in the manufacturing plan clearly limits the evaluation to consideration of the offeror's "procedures for identifying, acquiring, controlling and maintaining" materials for production, not an independent assessment of variations in quality of the materials.[6] Nor does the protester present anything to show that Gore-Tex will do any more than meet the basic requirements of the solicitation. An agency's determination of technical quality is not proven unreasonable by the protester's good faith belief that its proposal should have received a higher rating. Microcom, B-227267, Aug. 7, 1987, 87-2 CPD ¶ 138. Since the record shows that Thintech was designated as acceptable, it would have been unreasonable to rate offerors proposing the use of Gore-Tex any higher than those offering Thintech, absent evidence that the Gore-Tex material significantly exceeds requirements and a provision in the solicitation for consideration of the quality of the proposed product.

In its initial protest, Tennier asserted that the agency in effect improperly waived the requirement to furnish letters of commitment from suppliers in evaluating Isratex's proposal, because Isratex had no commitment from any supplier of Thintech, production of which had been discontinued, or from any supplier of continuous filament batting, of which the only manufacturer is Reliance Upholstery Supply Company, Inc., of Gardena, California. The agency response included a letter of commitment from Marywell, Ltd., a corporation essentially owned and controlled by Isratex, to furnish the fabric needed for the ECWSS, including the Thintech and the batting; the protester now contends that this letter is a mere sham and that a letter of commitment from a subsidiary is not valid for purposes of the solicitation. The protester argues that our Office should not allow the corporate veil to be used to create an unfair advantage. The record shows that Isratex and Marywell are both corporations with their stock owned equally by two brothers, Abe and Yoav Brin;[7] while Isratex manufactures apparel,

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[6]Similarly, the evaluation of offerors' quality assurance plans provided for evaluation of the offeror's basic organization and structure to identify, control, and correct defects, not for evaluation of the quality of the proposed product. The protester has presented no evidence that the agency's rating of the two proposals as "acceptable" under the quality assurance plan factor was other than reasonable.

[7]The record also contains evidence that Timothy G. Lafferty, President of Marywell, has in the past acted as an agent of Isratex.

Marywell is a textile converter. Marywell purchases raw fiber from manufacturers and manufactures fabric conforming to its customers' needs; the company manufactures fabric for a variety of customers including Tennier and the government, as well as Isratex. The record contains no indication that Isratex's reliance on its subsidiary to supply letters of commitment provided any unfair advantage in the competition; whether or not Marywell is a subsidiary, its failure to supply material in a timely manner would not excuse Isratex from a failure to meet its contractual commitments. The protester makes no showing that the interests of fair competition prevent the agency from accepting a letter from Marywell as a valid letter of commitment for its parent corporation. Thus, while the corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy, see Bangor Punta Operations, Inc. v. Bangor and Aroostook Railroad Co., 417 U.S. 703, 713 (1974), Tennier has demonstrated no such overriding policy in the instant case. The agency could therefore reasonably consider a letter of commitment from Marywell to its parent to satisfy the requirements of the solicitation.

The protester also contends that the agency should have rejected the Isratex proposal because it did not identify Reliance, the only manufacturer of the required batting, in its list of proposed suppliers. The protester argues that the awardee thus took exception to a material requirement of the solicitation.

The awardee explains that in preparing its proposal, it asked Marywell to supply a quote for batting in accordance with MIL-B-41826; it did not inform Marywell that drawing No. 22-2-43 restricted the batting to the class 12, continuous filament batting. Marywell, ignorant of the restriction, obtained a quote from Hobbs Bonded Fiber of Mexia, Texas, and Isratex listed Hobbs as its batting supplier under DPSC clause 52.209-9P05 in the business proposal. As the agency had advised offerors, it did not provide a copy of the business proposal to the production specialist conducting the evaluation, who was unaware that the awardee planned to buy batting from the wrong source. Since the technical proposal took no exception to the requirements, the evaluator rated the initial proposal as acceptable under the materials subfactor, and the agency did not pursue the matter further until after award, when the contracting officer showed the business proposal to the specialist in connection with the protest.

The RFP did not require that offerors list their proposed suppliers as part of their technical proposals; rather, as noted above, the list was to be submitted as part of their business proposals, and was intended to allow the agency to

identify any proposed supplier who was debarred or suspended. Isratex's listing of an incorrect source of supply for the batting thus did not rise to the level of an exception by the awardee to the RFP's technical requirements. Rather, the listing of Hobbs as a supplier pursuant to DPSC clause 52.209-9P05 is solely a matter of responsibility, not technical acceptability, as is confirmed by the language allowing an offeror to substitute suppliers at any time prior to award. See Hughes Ga., Inc, B-244936; B-244936.2, Nov. 13, 1991, 91-2 CPD ¶ 457.[8]

The protester also complains that the agency improperly waived the requirement for Isratex to provide historical standard allowed minutes with its manufacturing plan. Further, the protester notes that in its BAFO the awardee substantially increased its estimate for standard allowed minutes, while dramatically reducing its price. The protester argues that the agency therefore failed to consider price realism in evaluating the manufacturing plan.[9]

The agency explains that Isratex was not expected to provide historical figures on standard allowed minutes, since it had never produced a comparable sleeping bag and therefore had

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[8]In any event, the protester has been unable to establish prejudice, which is an essential element of a viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Before rejecting a proposal which is otherwise in the competitive range, an agency has the obligation during discussions to advise an offeror of weaknesses, excesses, or deficiencies in its proposal, correction of which would be necessary for the offeror to have a reasonable chance of being selected for award, in order to give the offeror the opportunity to satisfy the government's requirements. tq Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. The record shows that had the agency advised the protester of its error and extended it the opportunity to revise its proposal, the change would have had minimal cost impact--less than $200,000, or less than 3 percent of the nearly $6.7 million difference in price. There is nothing in the record to indicate any advantage in the protester's proposal such that the selection decision would have been different had the agency advised Isratex of its error and the awardee's price proposal had been increased by $200,000. See Suncoast Scientific Inc., B-240689.2, Mar. 13, 1991, 91-1 CPD ¶ 275.

[9]The protester also argues that the agency should have considered life cycle costs in the price evaluation. This allegation is untimely, since it relates to an alleged impropriety that should have been apparent prior to receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).

no such data. The solicitation provided for consideration of price realism only insofar as an offeror had to demonstrate "that the proposed cost or price provides an adequate reflection of its understanding of the requirements of this solicitation." The agency has provided a copy of the awardee's proposal to counsel for the protester under a protective order; the protester has offered no basis for concluding that the awardee's price and manufacturing plan reveal any lack of understanding of solicitation requirements.

The protester also argues the agency failed to give proper consideration to the superiority of its proposal in the area of past performance and experience. Documentation submitted in response to the protest indicates that the agency considered 20 current and past contracts; of these 20, Tennier completed 11 on time and encountered excusable delay in three instances. Of the remaining six, agency records indicated that the late deliveries were partially excusable under one contract, No. DLA100-90-C-0384; for that contract and three others, the deliveries that appeared inexcusable were related to late deliveries from a sole-source supplier, an inexcusable cause of delay but a mitigating circumstance. The agency considered deliveries under the remaining two contracts to be inexcusably late and devoid of mitigating circumstances.

The protester does not deny that deliveries were late under six contracts, although it denies having any responsibility for the late deliveries under contract No. DLA100-90-C-0384. The protester argues that it should not have been downgraded for the contracts in which it had difficulties with a sole-source supplier and that its late deliveries under two contracts came within the Variation in Quantities clause, Federal Acquisition Regulation (FAR) § 52.212-9, and therefore were excusable.

Contract No. DLA100-90-C-0384 aside, the protester and the agency attribute the late deliveries to problems with suppliers; the difference is that Tennier apparently considers such problems an excusable cause of delay. FAR § 52.212-9 relates to acceptance of deliveries deviating from specified quantities within a specified range; in relevant part, the provision states that a "variation in the quantity of any item called for by [the] contract will not be accepted unless the variation has been caused by conditions of loading, shipping or packing, or allowances in manufacturing processes." The clause is not a general waiver of the requirement to make timely delivery. In any case, it appears that the agency did consider the mitigating circumstances of the delinquencies in increasing the

protester's rating to marginally acceptable, bordering on fully acceptable. The protester has failed to show that the agency acted unreasonably in considering its past performance in the course of the evaluation.

The protester also contends that the evaluation of Isratex's proposal was unreasonable because the awardee received a similar (marginally acceptable, "bordering on acceptable") rating to its own, although the awardee's rate of inexcusable, unmitigated delinquency was much higher--5 of 14 contracts, or 35.7 percent, versus 2 of 19 contracts, or 10.5 percent for Tennier. In reviewing Isratex's "marginally acceptable" rating, the contracting officer looked at the awardee's most recent contracts and found substantial improvement in performance; deliveries under all six recent contracts were on time.[10] While finding neither contractor to deserve an "acceptable" rating, the contracting officer did recognize positive aspects of both firms' performance that indicated a higher probability of conformance to delivery schedules by those firms than by the lowest priced offeror, who also received a "marginally acceptable" rating. In the case of Isratex, these aspects related to recent performance and resulted in the determination that despite receiving the same adjectival rating as the lowest priced proposal, the awardee's proposal was worth the slight additional cost. Tennier's performance was slightly better, but in view of the substantial equivalence of other aspects of the proposals, did not justify the substantial price premium associated with that proposal. This conclusion appears neither unreasonable nor inconsistent with the listed evaluation criteria, and the contracting officer could reasonably conclude that the awardee's conformance to schedules in its recent contracts was as significant for the purposes of distinguishing between proposals as Tennier's somewhat better record overall.

SELECTION DECISION

In its comments on the agency report, filed with our Office on April 22, 1 month after receiving the report, the protester raises issues related to the adjectival rating system, alleging that the evaluation scheme served to artificially compress the technical ratings so that the

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[10]The lowest priced offeror was delinquent on its four recent contracts; the protester was delinquent on one of two recent contracts. The agency was unable to discuss its findings on recent contracts with offerors because of time constraints, but there is no evidence that consideration of recent contracts adversely affected the rating of either offeror.

agency was unable to make quality distinctions among proposals. Tennier's objections to the use of the adjectival rating scheme, which was described in the solicitation, are untimely raised, since under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), protests based on improprieties in a solicitation must be filed prior to the time set for receipt of initial proposals. In any event, our chief concern in the application of evaluation methods is the ability of the method in question to give the selection authority a clear understanding of the relative merits of proposals; we have found that the use of adjectival rating schemes, supported as here by narrative assessments of the individual proposals, can reasonably convey a proper appreciation of the strengths and weaknesses of individual proposals. See Ferguson-Williams, Inc., 68 Comp. Gen. 25 (1988), 88-2 CPD ¶ 344. We have no basis to conclude that the evaluation scheme used here by the agency created any artificial equality of proposals, and the record demonstrates that the adjectival scheme, in conjunction with the narrative assessments of the evaluators, provided a reasonable method for discerning the strengths and weaknesses perceived by the evaluators and a reasonable method for recognizing the advantages and disadvantages of award to one offeror as opposed to another.

The solicitation provided that price would become the dominant selection factor between two relatively equal proposals. As noted above, the agency reasonably found the awardee's manufacturing plan compliant and acceptable under the listed evaluation scheme; the protester presents nothing to show that its own proposal was any more than acceptable. The protester has presented nothing to demonstrate that its quality assurance plan should have received a higher rating and has alleged no deficiencies in the awardee's plan. Neither offeror could demonstrate an unblemished record of timely delivery and customer satisfaction, but the agency reasonably found aspects of both firms' performance entitling them to more consideration than the rating of marginally acceptable. The agency reasonably found the two proposals equal in merit and therefore the selection of the lower priced offer was reasonable and consistent with the evaluation scheme. While the protester argues that its status as a small business entitled it to special consideration in the selection decision, the solicitation clearly stated that such status would only be controlling in the event of technical and price equality, and there was no basis for considering the protester's status in view of the considerable price advantage of the Isratex offer.[11]

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[11]The protester also contends that discussions were inadequate, partially because it considered its responses to

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The protester alleges that the selection decision arose from an improper desire on the part of the agency to create a source for an alternative material to Gore-Tex. Since we have found the evaluation and selection to be reasonable and consistent with the solicitation, this basis of protest is without merit. To the extent that Tennier contends that the agency unfairly disregarded the lowest priced offer in an effort to make an award to a firm offering Thintech instead of Gore-Tex, Tennier is not the appropriate party to raise this issue on behalf of the low offeror.

The protest is denied.

for James F. Hinchman
General Counsel

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[11](...continued)
questions about past performance fully responsive to any conceivable concern that the agency could have had. As noted above, however, the agency continued to have concerns despite the protester's assertion that it was not responsible for its delinquencies. The protester also alleges that it was misled about the availability of Thintech, or that in the alternative, the agency should have rated Isratex's proposal less highly because of the material's unavailability. In this respect, the record shows that Marywell procured extra quantities of Thintech under a prior contract, which it is supplying to Isratex.