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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: USIA Underwater Equipment Sales Corporation

File: B-292827.2

Date: January 30, 2004

Shelton H. Skolnick, Esq., Skolnick & Leishman, for the protester.
Capt. Richard M. Sudder, Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was properly rejected where its sample fabric failed a "pass/fail" test conducted by a certified and accredited laboratory.

DECISION

USIA Underwater Equipment Sales Corporation protests the rejection of its proposal under request for proposals (RFP) No. USZA22-03-R-0035, issued by the United States Special Operations Command (SOCOM), MacDill Air Force Base (AFB), Florida, for maritime assault suit systems (MASS).

We deny the protest.

The RFP was to procure "[c]ommercial off the shelf [MASS,] consisting of an over-garment with neck ring, repair kit and user manual, which can be used as a combat suit in maritime, terrestrial, airborne, shipboard, and transitional environments by the U.S. Navy," under a 5-year, fixed-price, indefinite-delivery/indefinite-quantity contract. RFP at 12.

The RFP provided that award would be made on a best-value basis, considering technical, price, and past performance, listed in descending order of importance. The technical evaluation was to done in two parts: (1) a preliminary laboratory evaluation and (2) a full technical proposal evaluation. The RFP stated that the "proposed/submitted materials should meet minimum Preliminary Laboratory Evaluation requirements . . . in order to be considered for the Full Technical Proposal Evaluation and thus the award"; that that preliminary evaluation was on a "pass/fail" basis against seven specifically stated "pass/fail" standards; and that

"[t]hose offerors not passing all the standards may be eliminated from further consideration." RFP at 17-18.

The RFP required each offeror to provide four product samples (small, medium, large, and extra large) and two linear yards of the material used in the manufacture of its MASS. The product samples were required to be delivered directly to the U.S. Natick Soldier Center, Massachusetts (rather than MacDill AFB) for testing by the Textile Performance Testing Facility. The preliminary evaluation, which was to be performed on the two linear yards of material, required the material to pass seven "pass/fail" standards listed in the RFP. Among the standards was the requirement that the MASS material have abrasion at not less than 7500 cycles, as tested in accordance with American Society for Testing and Materials (ASTM) Testing Method No. D 3884.[1]

Seven proposals, including USIA's, were submitted in response to the RFP. Five of the proposals went through the preliminary evaluation.[2] USIA submitted product samples, including the "Thor-Tex" fabric material (manufactured by Brookwood Laminating) used in the manufacture of its MASS. Three of the five proposals had product samples, which included material made of Black Laminate and Gore Best (WKAX143604E), and the remaining proposal included samples and material made of another product.

The record evidences that the Textile Performance Testing Facility at Natick conducted the preliminary evaluation of offerors' MASS material in accordance with the testing methods specified in the RFP.[3] Because several proposals offered

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[1] Because fabrics can wear out when rubbed against another surface, an abrasion test is utilized to measure this property in a fabric. The fabric is rubbed backwards and forwards across another surface at a constant speed and in a specific manner for a given number of times, and then examined for wear. This property is measured using an abrasion tester. When the fabric shows wear, usually evidence of thread wear, the test is stopped and the number of strokes taken to produce the wear is quoted as the resistance to wear. See http://www.pp-t.co.uk/INFO%20pages/Archive/HowToTest.htm.

[2] Two proposals were eliminated from the competition for reasons not relevant here.

[3] This laboratory facility is certified for ISO (International Organization for Standardization) 9001:2000 and accredited for ISO/IEC 17205:1999. ISO-9000 standards are a series of internationally recognized quality assurance standards established by the ISO. The former standard covers requirements that an organization must have fulfilled to achieve quality management and the latter standard pertains to general requirements that a testing facility must have achieved to have a competent testing and calibration laboratory. To become registered, a

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material manufactured by the same manufacturer referencing the same product number, only one of these offerors' samples was tested. This was the only material that passed all of the "pass/fail" standards, and the proposals offering this material were the only ones permitted to undergo the full technical proposal evaluation. The MASS material submitted by USIA passed all the standards except abrasion. USIA's fabric failed at 3300 cycles, short of 7500 cycles required by the ASTM test. On October 16, SOCOM notified USIA that its proposal had been rejected because its material did not meet the abrasion requirement. This protest followed.

The gravamen of USIA's protest is that SOCOM improperly found that its material failed to meet the abrasion requirements. USIA asserts that test results performed by its supplier indicate that the material can meet a 7500-cycle abrasion requirement and it has proffered test reports allegedly showing that its material satisfied this requirement in at least four of five tests.

Our Office will review an allegedly improper technical evaluation of product samples to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. We will not make an independent determination of the merits of an offeror's proposal; rather, we will review the evaluation record, including the results of any test demonstration, to ensure that the agency's technical judgment has a rational basis and is consistent with the stated evaluation criteria. Sun Chem. Corp., B-288466 et al., Oct. 17, 2001, 2001 CPD ¶ 185 at 7.

As indicated above, SOCOM relied upon the tests performed by an ISO-certified and accredited laboratory testing facility to conclude that USIA's material did not meet the abrasion requirement. SOCOM explains that testing of USIA's material was performed by one of Natick's evaluators, who has a 4-year degree in textile technology and over 15 years of experience in performing the test. Although USIA has presented test results purportedly performed by Thor-Tex's manufacturer showing compliance with the abrasion requirement, the submitted documentation is not on its face designated as a test by the manufacturer and does not identify the product number of the tested material, and does not reflect that the tests were performed by an ISO-certified and accredited laboratory facility. Thus, the protester has provided no basis to question the independent tests of the ISO-certified facility. While USIA argues that the varying test results suggest that the agency may have mishandled the storage and/or rushed the testing of the fabric, we find no credible evidence of mishandling or improper testing by this ISO-certified facility, to which the offerors directly delivered their samples. Given the test results, we find that the

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company's procedures are reviewed for compliance with the standards by an independently accredited registrar. See www.iso.ch/iso/en/ISOOnline.frontpage.

agency properly eliminated USIA's proposal from the competition prior to the full technical proposal evaluation.[4]

Nevertheless, the protester argues that these "pass/fail" standards were "non-mandatory" and "discretionary," and that its proposal could not be rejected for failing to meet one of these standards. In support of this argument, USIA references the permissive words "may" and "should" (as opposed to "must" or "shall") in the relevant solicitation provisions (quoted above). We disagree with USIA's interpretation.

An interpretation must be consistent with the solicitation read as a whole and in a reasonable manner. Indeed, in some cases, the use of the ordinarily permissive words "may" or "should" does not render a provision other than mandatory when the context in which those words are used is considered. All Star Maint., Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294 at 4-5. Here, the solicitation made clear that each of the standards was "pass/fail," and that the preliminary evaluation, which encompassed all seven standards, was "pass/fail." "Pass/fail" is a term that is unambiguous and clearly connotes mandatory requirements that must be met. Thus, the solicitation read as a whole makes it clear that an offeror's submitted sample must meet all seven of the standards as a prerequisite to the offeror's proposal being considered in the full proposal evaluation. Id.

In sum, USIA's proposal was properly rejected because its sample failed the abrasion test.

The protest is denied.

Anthony H. Gamboa
General Counsel

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[4] USIA nevertheless questions the validity and credibility of the tests conducted on the Black Laminate and Gore Best material, which found this material met the ASTM requirements, because not all of the offerors' samples were tested. We see no basis to question the qualified laboratory's technical judgment that repeating tests for the same material was unnecessary. While USIA maintains that the timing of the tests on the Black Laminate and Gore Best material indicates a bias by the agency in favor of that fabric and a lack of good faith towards offerors proposing a different material, unfair or prejudicial motives will not be attributed to government officials on the basis of mere inference or supposition. Wilcox Indus. Corp., B-281437.2 et al., June 30, 1999, 99-2 CPD ¶ 3 at 4.