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Decision

Matter of: Engineered Fabrics Corporation

File: B-284154; B-284154.2; B-284154.3

Date: February 23, 2000

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Michael D. Hays, Esq., Dow, Lohnes & Albertson, and Mike Kinard, Esq., Kinard, Crane and Butler, for American Fuel Cell and Coated Fabrics Company, the intervenor.

Niketa L. Wharton, Esq., and Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation for fuel tanks for F-15 aircraft is not ambiguous where the solicitation specifically lists the part numbers of the two manufacturers whose products have been approved for use in the aircraft by the aircraft's original manufacturer and includes a "products offered" clause, which allows firms to offer alternate products that are physically, mechanically, electrically, and functionally interchangeable with the products identified in the solicitation.

DECISION

Engineered Fabrics Corporation (EFC) protests the terms of request for proposals (RFP) No. SP0475-99-R-2508, issued by the Defense Logistics Agency (DLA) for fuel tanks for the Department of the Air Force's F-15 aircraft.

We deny the protest.

The RFP, issued August 23, 1999, provided for the award of a fixed-price, indefinite-quantity contract for fuel tanks for the Department of the Air Force's F-15 aircraft. RFP at 2-4, 31. The RFP was restricted to EFC and American Fuel Cell and Coated Fabrics Company (AmFuel), "the only sources of supply known to have the capability to furnish the required [fuel tanks]." RFP at 5-13; Agency Response to Issues Raised in Conference Call, Jan. 27, 2000, Attach. No. 1, Justification for Other

Than Full and Open Competition. The RFP's procurement item description specified for each of the five requested types of tanks the appropriate national stock number, as well as the EFC and AmFuel part numbers. RFP at 5-13. The agency explains that the EFC and AmFuel fuel tanks that correspond to the part numbers listed in the RFP were approved for use in the F-15 aircraft more than 10 years ago by McDonnell Douglas Corporation¹ (the manufacturer of the F-15 aircraft) using the applicable McDonnell Douglas procurement specifications.² Agency Response to Issues Raised in Conference Call, Jan. 27, 2000, at 1-2.

The RFP included DLA's "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" clause (similar to DLA's former "Products Offered" clause), which allows firms to offer alternate products which are physically, mechanically, electrically, and functionally interchangeable with the products identified in the solicitation. RFP at 31-32; see Henschel, Inc., B-275390.5, May 14, 1997, 97-1 CPD ¶ 184 at 2. The RFP added that technical data packages were not available from the agency for the specified EFC and AmFuel part numbers, and that firms offering alternate products were required to submit sufficient technical data on any alternate product offered, as well as the named part number, to enable the agency to evaluate the alternate product to determine whether it is interchangeable with the named part number. RFP at 5-13, 31. The RFP also noted that "configuration control applies," and included a configuration control clause providing, in part, that "[t]he furnished item(s) shall conform to the approved configuration requirements/revision as shown in the Procurement Item Description unless a variation is processed and approved as provided . . . in accordance with MIL-STD-973."³ RFP at 5-13, 25

The RFP stated that award would be made to the offeror whose proposal represented the best value to the government, considering price and past performance. RFP at 34-35.

¹ McDonnell Douglas is now Boeing St. Louis.

² The McDonnell Douglas procurement specifications for the fuel tanks incorporate by reference, among other things, military specification MIL-T-5578C (as amended) that sets forth certain requirements for the tanks' self-sealing capabilities. Protester's Comments, Jan. 5, 2000, Encl. 4, McDonnell Douglas Corporation Procurement Specification for Tank, Fuel, Aircraft, Self-Sealing, #2 Fuselage, at 2U.

³ MIL-STD-973 sets forth the requirements for configuration control. Configuration control concerns who controls the design changes made to an item, the government or the manufacturer. The government can obtain control of items it buys by part number, thus giving it the right to approve any changes made to an item. See Camar Corp., B-253016, Aug. 11, 1993, 93-2 CPD ¶ 94 at 4 n.1.

EFC, the original equipment manufacturer of the fuel tanks, protests that the RFP's requirements regarding the fuel tanks' weight limitations and self-sealing capabilities are ambiguous. The protester argues that, because it believes that the AmFuel products identified by part number in the solicitation weigh more than do EFC's fuel tanks, and do not self seal to the extent required by MIL-T- 5578C (as incorporated in the applicable McDonnell Douglas/Boeing procurement specification), it is unclear to EFC what the RFP's actual requirements are. Protest at 5-7, 10-11; Protester's Comments, Jan. 5, 2000, at 5; Protester's Comments, Jan. 18, 2000, at 5. Specifically, the protester complains that while "AmFuel's self-sealing fuel construction . . . was qualified for the . . . Air Force F-15 . . . based on a self-sealant that quickly activated . . . AmFuel's self-sealing fuel construction . . . as recently delivered to the Air Force, the Navy and the Army . . . does not activate properly, and does not meet MIL-T-5578C and associated aircraft manufacturer specifications." Protester's Comments, Jan. 5, 2000, at 11; see id., Encl. 1, Declaration of EFC's Senior Vice President, at 7; Protester's Comments, Jan. 18, 2000, Encl. 1, Declaration of EFC's Vice President for Engineering, at 5.

In support of this contention, EFC refers to Technical Report No. NAWCADPAX—98-2-TR (Mar. 18, 1998) (hereinafter Navy 98-2-TR), prepared by the Naval Air Warfare Center Aircraft Division, entitled "F/A-18 A/B/C/D Gunfire Performance Verification Testing on AmFuel Self-Sealing Fuel Cell Material," and a memorandum drafted by an employee of the Navy describing a gunfire test performed by the Navy in April 1998 on an AmFuel F-15 fuel cell as a follow-on to the tests described in Navy 98-2-TR, both of which assertedly conclude that in several instances during the tests the AmFuel samples did not self-seal to the extent required by MIL-T-5578C.⁴ Supplemental Protest, Dec. 28, 1999, Attach. 1, Navy 98-2-TR at ii, and Attach. 2, Navy Memorandum, F/A-18 C/D Gunfire Testing, NAWC WD China Lake (Apr. 7, 1998), at 2. EFC also references various personal inspections of the differences in composition in AmFuel's fuel tanks as well as other negative comments and information concerning AmFuel's fuel tanks. Supplemental Protest, Dec. 28, 1999, at 5-6; Protester's Comments, Jan. 5, 2000, Encl. 1, Declaration of EFC's Senior Vice President, at 5-7; Protester's Comments, Jan. 18, 2000, Encl. 1, Declaration of EFC's Vice President for Engineering, at 1-8; Supplemental Protest, Feb. 5, 2000, at 2-3.

EFC concludes that if the agency had specified what the government actually requires as to the maximum weights of the fuel tanks and the tanks' self-sealing

⁴ The agency disputes the protester's characterization of the test results, and points out that the tests were conducted by the Navy rather than the Air Force and were not performed in accordance with all of the requirements of MIL-T-5578C. Agency Report, Jan. 11, 2000, at 2-3. For example, the Air Force mechanical engineer whose responsibilities include the F-15 aircraft's fuel system concluded that "the results of the testing were positive and therefore deemed acceptable as is." Agency Report, Dec. 22, 1999, Attach. 11, at 2.

capabilities, then “either AmFuel would have been required to submit a proposal for what is truly an ‘alternate product,’ [or] EFC would have been given information sufficient to offer an ‘alternate product,’ decontending its ‘exact product’ to respond to the requiring agency’s apparent needs for a lesser product.” Protester’s Comments, Jan. 5, 2000, at 5.

A solicitation requirement is not ambiguous unless it is susceptible to two or more reasonable interpretations; when a dispute exists as to the actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Eagle Fire Inc., B-257951, Nov. 30, 1994, 94-2 CPD ¶ 214 at 2. An agency may properly express its needs by specifying a particular product and affording other firms an opportunity to submit offers for alternate products, where, as here, the agency has insufficient technical information to more adequately describe its requirements. Henschel, Inc., supra, at 4.

Here, the solicitation requests proposals for fuel tanks manufactured by AmFuel or EFC and identifies the tanks requested by their specific part numbers. As explained previously, the products identified by these part numbers were approved for use in the F-15 aircraft more than 10 years ago by McDonnell Douglas using its procurement specification. Because the McDonnell Douglas procurement specification expressly sets forth certain maximum weight limitations for the fuel tanks and incorporates by reference the self-sealing capabilities detailed in MIL-T-5578C, and the RFP specifically provides that “configuration control applies,” see RFP at 5-13, 25, the RFP is not ambiguous: it requires that the AmFuel or EFC products supplied under the part numbers set forth in the solicitation conform to the approved configurations.

EFC’s argument regarding its inability to formulate a proposal for an alternate product because it was unclear to EFC what requirements would be imposed regarding the fuel tanks’ maximum weights and self-sealing capabilities is meritless. As stated above, the products identified by part number in the solicitation were approved under the McDonnell Douglas procurement specifications and military specifications/standards referenced therein, and there is no indication in the record that the agency has approved a change in configuration for either manufacturer’s fuel tanks which deviate from the requirements of those specifications. Accordingly, in order for an offered alternate product to be “physically, mechanically, electrically, and functionally interchangeable with” the products identified in the solicitation as required, RFP at 31, the alternate product would have to meet the same requirements regarding the fuel tanks’ maximum weights and self-sealing capabilities as the identified products.

We agree with the agency that, although EFC casts its protest as a challenge to the clarity of the RFP, EFC is primarily contending that if AmFuel is awarded a contract under this solicitation, it will not provide fuel tanks in the same configuration as

those AmFuel fuel tanks that were approved for use in the F-15 aircraft more than 10 years ago by McDonnell Douglas under the applicable procurement and military specifications/standards. In other words, EFC's contention is that AmFuel will not provide the properly configured fuel tanks as specified by the RFP. However, whether or not the agency will properly administer the contract and require the contractor to perform all of the requirements of the contract are matters of contract administration which our Office will not review. Northwest EnviroService, Inc., B-259434, B-259434.2, Mar. 30, 1995, 95-1 CPD ¶ 171 at 6 n.3.

While conceding that "AmFuel is located in Magnolia, Arkansas, and is presently capable of complying with the Berry Amendment," the protester appears to speculate that if AmFuel is awarded the contract, the Air Force may permit AmFuel to "transfer . . . [the] contract to an affiliate in France" in violation of the Berry Amendment.⁵ Protest at 7-8. The premature nature of this speculative allegation notwithstanding, we note again that whether or not the agency will properly administer the contract and require the contractor to perform all of the requirements of the contract are matters of contract administration which our Office will not review.

The protester next argues that AmFuel cannot properly be found responsible by the agency, and its proposal under this RFP should therefore be rejected, because its product will not comply with the requirements of the McDonnell Douglas procurement specification and applicable military specifications and because AmFuel lacks adequate financial capability. Protest at 8-10; Supplemental Protest, Dec. 28, 1999, at 4. Because the record shows that there has been no determination of responsibility, Agency Report, Jan. 11, 2000, at 1-2, this aspect of EFC's protest is also premature and will not be considered. Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235 at 4. In any event, our Office will not review an affirmative responsibility determination absent a showing of fraud or bad faith or that definitive responsibility criteria were not applied. Id. Contracting officials are presumed to act in good faith and, in order to establish otherwise, there must be virtually

⁵ The RFP (at 23) included the standard "Preference for Certain Domestic Commodities" clause, Defense Federal Acquisition Regulation § 252.225-7012, which implements the Berry Amendment, 10 U.S.C. § 2241 note (1994), which generally restricts the Department of Defense's expenditure of funds for certain articles and items, including synthetic fabric and coated synthetic fabric, to domestically produced products. Our Office has previously concluded that certain fuel tanks were "items of individual equipment manufactured within the Berry Amendment restriction." Department of Defense Purchase of Fuel Cells, B-246304.2 et al., July 31, 1992; see also Dash Eng'g, Inc.; Engineered Fabrics Corp., B-246304.8, B-246304.9, May 4, 1993, 93-1 CPD ¶ 363 at 2-3, aff'd, B-246304.12, B-246304.13, Sept. 27, 1993, 93-2 CPD ¶ 184 at 3-4.

irrefutable proof that the agency had a malicious and specific intent to harm the protester. Id. The protester has made no such showing.

The protester finally alleges agency bias in favor of AmFuel, complaining that DLA, through the Department of the Air Force, “has repeatedly given preferential treatment to AmFuel.” Protest at 4. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. RONCO Consulting Corp., B-280113, Aug. 11, 1998, 98-2 CPD ¶ 41 at 5. In addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action that unfairly affected the protester’s competitive position. Id. Here, EFC has furnished no credible evidence to support its allegation, and has not demonstrated how the alleged preferential treatment unfairly affected its competitive position. Accordingly, we have no basis upon which to question the motives of the cognizant agency officials.

The protest is denied.

Comptroller General
of the United States