

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220531

DATE: December 17, 1985

MATTER OF: The W.H. Smith Hardware Company

DIGEST:

1. Agency determination that alternate product is technically unacceptable is reasonable where the alternate product did not comply with a material specification provision.
2. Where the initial reason advanced by the agency for rejection of an offer is not substantiated, but the record establishes that a sufficient basis for the agency action existed at the time the agency made its decision, the rejection is not legally objectionable.
3. Where the solicitation listed an approved source item and provided that offerors of alternate products were required to submit sufficient information to permit agency evaluation, but did not call for product testing, the agency is not required to accept offer of product samples and either test items itself or submit them to outside testing laboratory.

The W.H. Smith Hardware Company (Smith) protests the award of a contract to Sunbury Supply Company (Sunbury) under request for proposals (RFP) No. DLA700-85-R-2522 for fluid level control flush valves issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA). Smith contends that its lower priced alternate product was improperly evaluated and rejected by DLA, since it was equivalent to the approved source item offered by Sunbury.

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We find the protest without merit.

The RFP called for three contract line items (CLIN's) for quantities of the valves to be delivered to different locations. The valves were listed by national stock number and were described as being adjustable over a 9-1/2 inch to 14 inch range and constructed of stainless steel control components with "Celcon" component parts. The valves were to be of an anti-siphon type with special configuration for salt water application. Two models manufactured by Fluidmaster, Inc., were listed as approved items.

Under clause L30 of the RFP, offerors were advised that while the approved items had been determined to be acceptable, "neither detailed specifications nor other data may be available for evaluating technical acceptability of other products." Offerors offering alternate products were required to furnish drawings, specifications or other data necessary to clearly describe the characteristics and features of the product being offered. Such products were required to be identical to or physically, mechanically and functionally interchangeable with the listed product. The data submitted was required to be sufficient to establish this equality. The clause further provided that if the government could not make such a determination by contract award date, the product may be considered technically unacceptable. Clause L30 did not indicate that the government would conduct any testing in making this evaluation, but emphasized the requirement for detailed supporting material to permit agency evaluation of alternate products.

Smith offered as an alternate product a Coast Foundry valve. Smith's proposal included manufacturer's literature which it argues shows equivalence to the listed Fluidmaster valves. In its proposal, Smith also offered to provide samples of its product and the Fluidmaster valve to the government for testing. DLA determined that Smith's alternate product was unacceptable because it utilized a plastic part where stainless steel was required in a control component. The low offeror, O & S Supply, was found technically unacceptable for the same reason. Smith's offer was

second low on CLIN's 0001 and 0002, but it was higher than Sunbury on CLIN 0003, at \$3.85 versus the \$3.83 Sunbury unit price. After DLA determined that Smith was technically unacceptable, award for all three CLINS was made to Sunbury.

Smith argues that both the Fluidmaster models and its product, the Coast Foundry valve, have stainless steel control components. Smith contends that the control components are the valve and orifice which permit water flow and cutoff. Smith asserts that the plastic connecting link and adjustment clip on the Coast Foundry valve, which DLA found technically unacceptable, is not a control component. Moreover, Smith points out that the Fluidmaster valve uses a plastic lever arm which serves the identical function, so that even if this piece is considered a control component, the approved source item also contains a plastic component.

A review of the technical proposals shows that both the Fluidmaster and Coast Foundry models have plastic components in the assembly which activates the valve to stop the flow of water. While the Coast Foundry model has a plastic connecting link and adjustment clip, the Fluidmaster has a plastic lever arm to which the connecting link is attached. As the Fluidmaster model, the approved item, has plastic in the same area of the item which DLA considered to be a "control component," we find the rejection of Smith's proposal as technically unacceptable for this reason to be questionable.

However, the solicitation also required that the valve be adjustable over a 9-1/2 inch to 14 inch range. The Coast Foundry valve has an adjustment range of 4 inches to 12 inches. In our view, this is a material specification and Smith's failure to offer a product which complied with this requirement constituted a reasonable basis for rejection of the proposal. In reviewing the protest, our concern is whether, in light of the record, the agency's decision was supportable in light of the circumstances as they existed, and not whether the decision was properly supported by the basis advanced by the agency at the time it took the action. Tri-Com, Inc., B-214864, June 19, 1984, 84-1 C.P.D. ¶ 643. Thus, while the record does not establish the propriety of the rejection of Smith's proposal on the basis of the plastic component, because the record does show that DLA had a reasonable basis for its decision to reject Smith's offer as technically unacceptable, we find the rejection to be legally unobjectionable.

Smith has also protested that, despite its offer to provide samples, DLA failed to perform a proper evaluation of its product because of DLA's failure to test the product, or submit it to an independent laboratory for testing. However, the solicitation did not provide for testing of alternate products. On the contrary, it made clear that the determination would be made from information submitted with the offer. We have held that under these circumstances the agency is under no obligation to test any alternate products, and it is the offeror's responsibility to submit sufficient data for technical evaluation. Compressor Engineering Corp., B-213032, Feb. 13, 1984, 84-1 C.P.D. ¶ 180.

Finally, Smith contends that Sunbury's proposal was unacceptable because under paragraph 12 of its Standard Form 33 (Discount for Prompt Payment) Sunbury inserted "net 20 days." However, this has no effect on the acceptability of Sunbury's proposal because the Federal Acquisition Regulation, 48 C.F.R. § 52.232-8 (1984), makes it clear that prompt payment discounts are no longer considered in the evaluation of offers. Further, the solicitation, in a note on page 13, advised "Payment terms (e.g., net 20) offered by the contractor will not be deemed 'required payment dates.'"

The protest is denied.

for *Stephen Elias*
Harry R. Van Cleve
General Counsel