



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W.H. Smith Hardware Company

File: B-228169

Date: December 7, 1987

DIGEST

1. Procuring agency's technical evaluation of protester's product under small purchase procedures is upheld where the protester submitted descriptive literature which indicated that the product did not meet the specifications and the protester has not shown that this determination was unreasonable.
2. Small business size status is for determination by the Small Business Administration and not by the General Accounting Office.

DECISION

W.H. Smith Hardware Company protests the rejection of its low quotation under request for quotations (RFQ) No. DAAK01-87-Q0449, a small purchase small business set-aside, issued by the United States Army Troop Support Command (TROSCOM), for 329 load binders. TROSCOM rejected the quotation because the accompanying descriptive literature showed that the load binders offered deviated from a material requirement of the RFQ.

We deny the protest in part and dismiss it in part.

The protester, one of two companies submitting quotes by the January 27, 1987 closing date, submitted the low quote, but the load binders which it offered did not conform to the RFQ handle length requirement. W.H. Smith subsequently offered a different load binder by letter dated March 9, 1987, which was accompanied by descriptive literature on the substituted part.

The TROSCOM engineer determined that the descriptive literature indicated that the substitute part deviated from a material term of the specifications. The specifications

040780

required the binder to be able to withstand a tensile proof load of 16,000 pounds applied for not less than 1/2 minute. The descriptive literature for W.H. Smith's load binder indicated that the proof load was 10,800 pounds. Because of this discrepancy, the contracting officer determined that W.H. Smith's quote did not comply with the government's needs and issued a purchase order to the remaining quoter, Dresser Argus Incorporated.

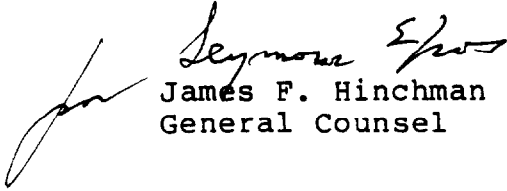
W.H. Smith alleges that it clearly indicated on its quote that its load binder met the specifications and that TROSCOM improperly evaluated the descriptive literature. W.H. Smith states that the 10,800 pounds proof load listed in its descriptive literature is not the same as the 16,000 pounds tensile proof load required by the specification; rather, the protester asserts, the 10,800 pound listing is merely a service rating used by the manufacturer to assure that the load binder will be used with the proper size chain. W.H. Smith contends that the breaking strength of the load binder, which is listed in the literature as 19,000 pounds, establishes that the binder will pass a 30 second, 16,000 pounds tensile proof load test.

Here, W.H. Smith has not shown that TROSCOM unreasonably evaluated its quote. The specifications require that "the load binders shall be capable of withstanding a tensile proof load of 16,000 pounds" and W.H. Smith's descriptive literature states that the load binders offered have a substantially lower proof load of 10,800 pounds. While W.H. Smith contends that the breaking strength of its binder is 19,000 pounds, the breaking strength was not an element of the specifications, and, in our view, does not overcome the specific indication in the descriptive literature that the protester's binders were capable of a proof load of only 10,800 pounds. Neither was the protester's general statement that its product met the specifications sufficient to overcome the deficiency created by the descriptive literature. See Toroid Corp., B-226816, June 26, 1987, 87-1 C.P.D. ¶ 635; LogE/Spatial Data Systems, Inc., B-205016, May 17, 1982, 82-1 C.P.D. ¶ 465. Accordingly, we think the agency acted reasonably in rejecting the protester's quote.

W.H. Smith has also challenged the award to Argus on the ground that it not a small business. On October 14, 1987, the Small Business Administration (SBA) determined that Argus was a small business. Under 15 U.S.C. § 637 (1982), The SBA has conclusive authority to determine matters of small business size status for federal procurement purposes.

Accordingly, our Office will not consider size status protests. 4 C.F.R. § 21.3(f)(2) (1987); Olympus Corp., B-225875, Apr. 14, 1987, 87-1 C.P.D. ¶ 427.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel