



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gentex Corporation

File: B-232525

Date: January 13, 1989

DIGEST

Contention that protester could have proposed items with improved overall performance had it been advised of new, higher optical density standard is without merit where (1) protester should have been on notice of new optical density standard from incorporation by reference in solicitation, and (2) solicitation provided for evaluation based on items previously submitted that were furnished under prior, lower standard, and did not contemplate modifications to the technology of those items; thus, even had protester been aware of higher standard, evaluation still would have been based on items furnished under the prior, lower standard.

DECISION

Gentex Corporation protests award to EDO Corporation, Barnes Engineering Division, under request for proposals (RFP) No. F33657-88-R-0083, issued by the Department of the Air Force for 4,000 laser eye protection visors. Gentex argues that the agency evaluated offers on the basis of an undisclosed requirement.

We deny the protest.

The procurement here was Phase I of a joint Air Force/Navy two-phase program initiated to protect air crew members from the threat of exposure to potentially eye damaging lasers. Short term, interim protection was to be provided by the purchase under Phase I of visors employing existing technology until better technology could be developed in Phase II. In connection with Phase I, the Air Force determined that only one technology was immediately available and that this technology was only available for production from two known companies, Gentex and EDO. After discussions with both firms, the agency concluded that little or no objective information existed on the protection

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capability and operational effectiveness of the visors for use in combat aircraft. Accordingly, a test program was designed encompassing both laboratory and operational flight testing using 200 representative visors purchased from each firm in April 1987. A benchmark test specification was established, designated as AESE 871391; that same specification, renumbered technical requirements document (TRD) 412-A-07878-54104 and dated October 9, 1987, was provided subsequently to both companies by the agency under cover letter dated November 6, 1987. Lab and flight testing commenced in August and November 1987 respectively, and all testing was completed in May 1988.

On February 11, the agency issued the RFP here, soliciting visors of the same part number as the visors both firms had supplied to the agency in April 1987 and which then were being tested. The RFP listed the primary evaluation criteria, in descending order of importance, as technical, price, and delivery schedule, with the latter two factors of equal weight. No provision was made in the RFP for submission of sample visors; rather, as the agency was making what it describes as "a one time purchase of existing equipment, which was then in the process of being tested," the RFP specifically provided for a technical evaluation based on a comparison of the results of laboratory and flight tests then being conducted with the requirements of the TRD (AESE 871391) and a pre-award survey. Among other things, the TRD required the visor to be designed to afford protection from specific laser wavelengths as defined in a February 1987 classified addendum to the TRD. After evaluating initial and best and final offers, the agency determined that the technical superiority of EDO's visor, as demonstrated in laboratory and flight testing, outweighed the advantages of Gentex's lower price; consequently, award was made to EDO on August 26.

In its protest, Gentex argues that its visor was evaluated for compliance with an optical density requirement of which it had not been informed. Gentex alleges that it never received the February 1987 classified addendum to the TRD, which required an optical density level of 3.6 (at a wavelength of LAMBDA 3); according to the protester, the only notice of the applicable optical density requirements it received was a letter dated March 27, 1987, which contained an optical density requirement of 3.4. The protester states that its visors were fabricated to meet this 3.4 optical density level, and that it was not until its debriefing that it learned its visors had failed the required optical density level of 3.6. Gentex maintains that had it been notified of the actual optical density requirement, it would have manufactured visors to meet that

requirement. Further, the protester contends that if it had manufactured to the required optical density level, other characteristics of its visor would have been affected, resulting in a probable improvement in the overall performance and technical evaluation of its visor.

Although the agency has been unable to provide documentary evidence of transmission, it believes that the classified addendum to the TRD, which Gentex denies receiving, was in fact provided to each offeror in November 1987, when the applicable TRD was furnished. In any event, the agency argues that the protester was clearly on notice of the classified addendum, since the addendum was incorporated by reference into the TRD.

Preliminarily, we agree with the agency that Gentex should have been on notice of the optical density requirement of 3.6 at least as of its receipt of the TRD in November 1987. This TRD, which Gentex does not deny receiving, clearly put offerors on notice of the existence and applicability of the February 1987 classified addendum containing the 3.6 optical density requirement. It was unreasonable for Gentex to assume that the March 1987 document it had received contained the correct optical density requirement, since the TRD specifically stated that the optical density requirement was based on the February 1987 addendum.

Whether Gentex was on notice of the 3.6 optical density requirement is not determinative of the outcome here in any event. As stated above, the RFP did not contemplate any modifications to the two offerors' items furnished as samples in April 1987; the evaluation was to be based on those existing items. Since the optical density requirement for these April 1987 items was 3.4, both Gentex and EDO were to be evaluated on the basis of items furnished in response to a 3.4 optical density standard, not the 3.6 standard. The Air Force did in fact evaluate the April 1987 items for both offerors and, not surprisingly, found that neither had a 3.6 optical density. Thus, while we do not understand why the agency provided for an evaluation of sample items against a higher standard than the one in effect when the sample items were produced, doing so here had no apparent effect on the outcome of the competition.

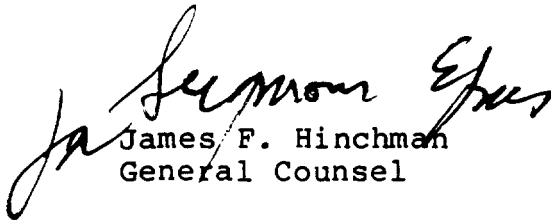
The selection of EDO ultimately had little to do with the optical density requirement: the determining factor in the selection of EDO for award was the firm's substantial superiority in the area of operational testing. The operational testing consisted of ratings by crew members in a number of areas to determine compatibility of the visors with cockpit lighting and display systems for eight

aircraft, and a criterion of the operational testing was whether 80 percent of the participating crew members rated the visor as at least satisfactory. The EDO visor ultimately was rated acceptable in five of the eight aircraft tested, and Gentex's visor was rated unsatisfactory in all eight.

Gentex's argument that it could have improved its visor's performance in several areas had it been advised of the 3.6 optical density standard (and been given a chance to propose items based on that standard) ignores the fact that the RFP sought offers of visors based on the two firms' established technology, as reflected in the April 1987 sample items. The Air Force did not want visors based on unproven technological changes that would have to be subjected to new testing. Again, as indicated above, this should have been clear from language in the RFP, including the provision for evaluation based on the samples previously submitted.

We conclude that the firms were evaluated on an equal basis and that the Air Force reasonably determined that selection of the EDO visor was warranted in view of the results of the operational testing.

The protest is denied.


James F. Hinchman
General Counsel