

1-16-155



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Fiber Materials, Inc.
File: B-246587
Date: March 18, 1992

Regina Nappi, Esq., for the protester.
Vera Meza, Esq., Department of the Army, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest of agency's determination that only one ablative coating would meet its needs is denied, where agency evaluated protester's offered alternate item and had a reasonable basis for finding that protester's product was unacceptable.
2. Agency was not required to consider a new product as an alternate item where, although it was being evaluated by agency technical personnel, it had not yet been approved as an acceptable alternate item.

DECISION

Fiber Materials, Inc. (FMI) protests the issuance of a small purchase order to Flamemaster Corporation under request for quotations (RFQ) No. DAAC79-91-T-1229, issued by the Army for ablative coating kits. FMI contends that the agency improperly failed to consider its acceptable alternate product.

We deny the protest.

The RFQ was issued under small purchase procedures.¹ It called for ablative coating kits used in rebuilding or refurbishing components of the Chaparral missile system. A synopsis of the solicitation was published in the Commerce Business Daily (CBD) on August 13, 1991, advising of the

¹Small purchase procedures can be used for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000. Federal Acquisition Regulation (FAR) § 13.000.

proposed procurement of a kit meeting the requirements of Army Missile Command (MICOM) specification MIS 36199, Flamemaster PN (part number) 3943 or 705. The Army stated it proposed to purchase the kits from Flamemaster, but invited offers of alternate items:

"No technical data [are] available . . . for manufacture of this item. Firms that can provide the required coating are encouraged to identify themselves and provide supporting evidence in writing to the contracting officer which may permit their participation in current and future procurements. Provide samples for testing. . . ."

In response to the CBD notice, FMI filed an agency-level protest of the proposed procurement of the item from Flamemaster, on the ground that FMI also produced an acceptable item that was well known to the Army. The Army denied FMI's agency-level protest and issued a small purchase order to Flamemaster in the amount of \$22,245. FMI then protested the procurement to our Office.

The protester argues that the Army had no basis for soliciting only Flamemaster for this item, since FMI also produces a qualified product. According to the protester, the CBD synopsis reference to PN 705 actually designates FMI's FlexFram 705, which the Army qualified as acceptable and purchased from FMI under prior purchase orders. The protester concedes that after qualifying FlexFram 705, the Army subsequently "experienced some debonding problems" with the product. FMI asserts, however, that it remedied those problems by working with the original manufacturer of the missile system, Ford Aerospace, to reformulate the product into FlexFram 725. That product, according to the protester, has been shown to be an approved ablative coating for the Chaparral program. In the alternative, therefore, FMI argues that its improved product, FlexFram 725, satisfies the ablative coating specification. In this connection, FMI asserts the solicitation as issued identifies an incorrect specification, since MIS 36199 has been replaced by MIS 43098, which identifies FMI's newer product, FlexFram 725 (along with a Flamemaster product), as a suggested source of supply.

The Army reports that the CBD notice incorrectly included PN 705--the FMI product--as an acceptable item, but believes this error should not have been misleading, since FMI was aware that the debonding problems with PN 705 had resulted in the agency's finding it was no longer an acceptable item. That finding, the Army explains, was the basis for FMI's efforts to develop an improved product, as well as the rationale for not accepting PN 705 for this procurement. The Army also reports that, although FlexFram 725 and the

proposed revised specification, MIS 43098, were both undergoing review, neither had been approved at the time the solicitation was issued.

Generally, when an alternate product is offered, a vendor must submit sufficient information regarding the alternate product to enable the contracting agency to determine whether the item meets all the requirements of the solicitation. Aero Components Co., B-243919, Aug. 14, 1991, 91-2 CPD ¶ 148. The responsibility is on the offeror to demonstrate affirmatively the acceptability of an alternate product. Id. We will not disturb the agency's technical determination unless it is shown to be unreasonable. East West Research, Inc., B-239516, Aug. 29, 1990, 90-2 CPD ¶ 178.

We find that the Army reasonably concluded that FMI's alternate product was unacceptable. The record shows that MICOM, which was responsible for developing and approving ablative coating requirements for the missile program, approved FlexFram 705 in December 1987.² In 1988, based on reported problems with that product, the Army asked Ford Aerospace to conduct tests. These tests indicated that, because FMI's product would not cure properly when applied to the primer used for the missile system, it broke loose or debonded from missile system surfaces, leaving them unprotected against high temperatures. Based on this experience with the product, Army technical personnel formally determined that, while the FMI coating might be adequate for other applications, it was not acceptable for use over the missile system primer.³

The protester has not provided any evidence that its previously approved product, PN 705, can meet the agency's minimum needs. To the contrary, as noted above, FMI itself concedes that the unacceptable debonding associated with that product led the firm to develop its improved product, FlexFram 725. We therefore find no basis for questioning the agency's determination that FMI's specified product could not meet its needs. Aero Components Co., supra.

We also disagree with the protester's argument that the agency should have considered its newer product, FlexFram 725, as an acceptable alternate item. The record shows that FMI did not actually offer this product in response to the

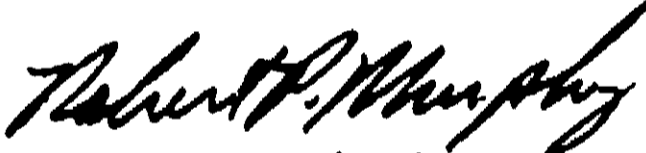
²The product is, as the protester correctly states, referenced in MICOM specification MIS 36199.

³Reference to PN 705 was not deleted from the specification entirely because it is possible the product can still be used over other types of primers.

notice. Having failed to do so, FMI has no basis for arguing its product should have been found acceptable. In any case, contrary to FMI's assertion, FlexFram 725 was not an approved item. The record shows that in July 1991, prior to the announcement of this procurement, MICOM proposed numerous changes to the coating specification that, among other things, would have included FlexFram 725 as an approved product.⁴ As of the time the purchase order was issued to Flamemaster, however, the proposed changes were still undergoing review, and FlexFram 725 had not yet been tested for approval. It was not until January 1992 that the Army completed definitive tests of FlexFram 725. Those tests showed that the improved product cured properly, did not exhibit any failure characteristics, and generally appeared to meet the ablative coating requirements. Based on these test results, the Army determined that FlexFram 725 would be an acceptable item for future procurements.

The protester also questions certain procedural aspects of this procurement, such as whether it was in fact conducted under small purchase procedures. In view of our determination that FMI did not offer an acceptable alternate product, and thus properly was not considered for award, FMI is not an interested party to object to other aspects of the procurement. See generally Gel Sys., Inc., B-231680, Oct. 4, 1988, 88-2 CPD ¶ 316.

The protest is denied.


James F. Hinchman
General Counsel

⁴These changes were incorporated in proposed specification MIS 43098, which has not yet been approved by MICOM.