



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fiber Materials, Inc.--Reconsideration

File: B-246587.2

Date: August 24, 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

Request for reconsideration of decision denying protest of a purchase order for ablative coating kits is denied where requester has failed to show that the prior decision--which found that the agency properly concluded that the protester did not have an acceptable alternate product--contained any legal or factual errors.

DECISION

Fiber Materials, Inc. (FMI) requests reconsideration of our decision, Fiber Materials, Inc., B-246587, Mar. 18, 1992, 92-1 CPD ¶ 288. In that decision, we denied FMI's protest of a purchase order issued to Flamemaster Corporation for ablative coating kits, under Department of Army request for quotations (RFQ) No. DAAC79--91-T-1229.

We deny the request for reconsideration.

The RFQ, issued under small purchase procedures, called for ablative (heat-protective) coating kits for the Chaparral missile system. (The purpose of the coating was to protect metal surfaces from very high temperatures associated with missile launches.) A synopsis of the solicitation was published in the Commerce Business Daily (CBD) on August 13, 1991, advising of the proposed procurement of a kit meeting the requirements of Army Missile Command (MICOM) specification MIS 36199, Flamemaster PN (part number) 3943 or 705. The notice stated that the Army proposed to negotiate on a sole source basis with Flamemaster for the kits, but invited offers of alternate items. 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 one of the products specified in the synopsis, PN 705, was its own product, FlexFram 705, which the Army

already had approved. The Army denied FMI's agency-level protest and issued a small purchase order to Flamemaster in the amount of \$22,245.

In the protest that FMI then filed with our Office, FMI asserted that, if it had been allowed to compete, it would have offered FlexFram 705; according to FMI, that product would have been acceptable, since it had been previously approved and was specifically referenced in the CBD notice. In the alternative, the protester stated that a newer FMI product, FlexFram 725, satisfied the specification and should have been considered. In this connection, FMI asserted that the solicitation as issued identified an incorrect specification, since MIS 36199 had been replaced by MIS 43098, which (along with a Flamemaster product) referenced FMI's newer product, FlexFram 725.

In denying FMI's protest, we pointed out that the CBD notice's reference to PN 705 (incorrectly listed as a Flamemaster product) was a mistake; the Army never intended to solicit FlexFram 705, and had a reasonable basis for not doing so: based on prior experience with and testing of the product, the Army had determined that it debonded unacceptably from the Chaparral system's metal surfaces--leaving them inadequately protected against high temperatures--and therefore did not meet the agency's minimum needs. We further determined that FMI had not shown that 705 did meet the Army's needs. With respect to the protester's alternative argument, we rejected it on the ground that, at the time the purchase order was issued, (1) the new specification had not been formally approved, and (2) the product it referenced, FlexFram 725, had not been fully tested.

FlexFram 705

In requesting reconsideration, FMI again argues that 705 would have been acceptable, and would have met the agency's requirements as indicated in the CBD notice. According to FMI, any problems the Army had with using 705 were due, not to changes in the product or the specification, but to the fact that the agency had changed the primer that it was using under the coating.

There is no merit to these arguments. First, the CBD notice merely indicated the agency's intention to procure ablative coating kits for the Chaparral program; the notice was not a solicitation for such kits. Second, the fact that 705 was mentioned in the notice could not make the product acceptable, where the agency already had found that it was unacceptable. As we explained previously, although the Army had approved 705 in 1987 for use in the Chaparral program, the agency received reports from the field in 1988

indicating that the coating was not performing properly. Tests that year showed that 705 would not bond properly to the missile system primer then being used, and therefore did not meet the agency's minimum needs. Given the fact that 705 had been found unacceptable for the Chaparral program, its mention in the CBD notice did not and could not obligate the Army to consider it for this procurement. Further, the proven unacceptability of this product also meant that FMI was not prejudiced by the agency's failure to solicit FMI in this procurement.

It was clear, moreover, that the cause of these problems was that the Army had changed the primer that it used. (As FMI stated in initial protest, "the Army experienced some debonding problems [in] 1988 with FlexFram 705 when it changed the priming system for the Chaparral Program.") In focusing again on the cause of the problem (the change in primers), FMI continues to ignore the result--that its product is not acceptable for the Chaparral program. We pointed out previously that FMI did not provide any supporting evidence that its product could meet the agency's needs. In its request for reconsideration, it still has not done so. Consequently, with respect to FlexFram 705, there is no basis for modifying our prior decision. Department of the Air Force, et al.--Recon., 67 Comp. Gen. 272 (1988), 88-1 CPD ¶ 357.

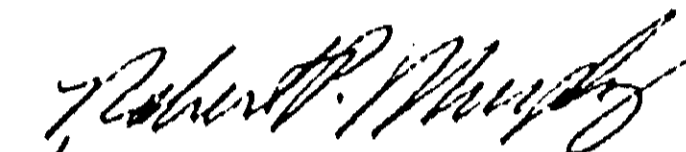
FlexFram 725

In the alternative, FMI argues that if the product specification in the CBD notice did not meet the agency's needs, the Army should have used the revised specification, MIS 43098, which listed FlexFram 725 as an approved product. We responded to this argument previously. We found 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; they were still undergoing review, moreover, as of the time the purchase order was issued to Flamemaster. FMI has not shown this conclusion to be erroneous.

We also noted in our decision that in January 1992, well after the purchase order was issued, the Army did complete testing of FlexFram 725; based on favorable test results, the Army determined that FlexFram 725 would be an acceptable item for future procurements. FMI now argues that, based on those tests, the agency should either (1) order ablative coating kits under the revised specification, MIS 43098 (which references FlexFram 725), or (2) issue no further purchase orders until the specification has been officially approved.

FMI appears to be stating what should be done with respect to any future procurement of the coating kits. However, a protest against a future solicitation is premature; the precise nature and provisions of the solicitation are speculative until it is actually issued. Our bid protest procedures are reserved for determining whether an award or proposed award complies with statutory, regulatory, or other requirements, Brown Assocs. Mgmt. Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299; they are not available for challenging future procurements, Browning-Ferris Indus., B-209234, March 29, 1983, 83-1 CPD ¶ 323. Consequently, FMI's arguments with respect to future procurements of the item are premature and not for consideration at this time.

The request is denied.


for James F. Hinchman
General Counsel