



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Magnum Microwave Corporation

File: B-250324

Date: December 23, 1992

Harry L. Fowler for the protester,
Vasso K. Monta, Esq., Defense Logistics Agency, for the
agency.
James W. Vickers, Esq. and Jerold D. Cohen, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. The General Accounting Office will not consider an allegation that an awardee will be unable to furnish the equipment that it has proposed, since whether an awardee can and will deliver equipment in conformance with contract requirements are matters of responsibility and contract administration.
2. Offered alternate item does not have to be subjected to qualification testing before award where the solicitation did not include a requirement for such testing.

DECISION

Magnum Microwave Corporation protests the award of a contract to MTS Microelectronics, Inc., for noncrystal controlled oscillators under request for proposals (RFP) No. DLA900-92-R-A053, issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency. Magnum argues that because MTS has never made the oscillators before, MTS does not have the capability to furnish the items in a timely manner, and that the furnished items should have been subjected to pre-award qualification testing.

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

The oscillator is an electronic device used in the Universal Exciter System, a component of the radar jamming system aboard the Navy's EA6B aircraft. While this is a weapons systems item, the Navy does not consider the oscillator a critical application. In the past, the government did not possess the required technical data to allow a procurement

from other than sources approved by Eaton Corporation. However, by the time of this procurement, the government possessed appropriate data to allow the evaluation of alternates to the suggested sources. Prior to the issuance of the RFP, the data was supplied to various firms that wanted to compete for the requirement.

The RFP contained the standard "Products Offered" clause that permitted firms to offer alternate products that were either "identical to or physically, mechanically, electronically and functionally interchangeable with" the listed products. The solicitation required that the item be built in accordance with Eaton Corporation, AIL division, drawing number 43084-1, a specification-control drawing.

The RFP was issued on March 17, 1992, and six offers were received by the April 7 closing date. Magnum's offer was based on its own part number, which was listed in the RFP as one of the approved source items. The five other competitors offered alternate products for evaluation under the "Products Offered" clause. A technical evaluation found all of the offered products to be technically acceptable, although the Navy has decided to add government source inspection to ensure conformity to the Eaton drawing.

Following two requests for best and final offers, MTS submitted the lowest price, \$866 per unit. Magnum submitted the fourth low offer, \$1049 per unit. The contract was awarded to MTS on July 13, 1992.

The first basis of Magnum's protest is that MTS does not have the technical and production capability to be able to produce 100 units within the required 180-day delivery schedule.

We dismiss this basis of protest. Whether an offeror can and will deliver equipment in conformance with contract requirements are matters of both the contracting officer's affirmative determination of the awardee's responsibility and contract administration, which our Office generally will not consider except in circumstances not present here. Mitco Water Laboratories, Inc., B-249269, Nov. 2, 1992, 92-2 CPD ¶ ____.

Magnum's remaining argument is that since MTS has not produced the oscillator before, DESC should have required some type of qualification test before award to assure itself that MTS's item will comply with the specifications. Magnum notes that its approved item had been subjected to government tests.

Evaluating an offer of an alternate product pursuant to the "Products Offered" clause essentially involves judging the

offer's technical acceptability. The contracting agency is responsible for evaluating the offer and ascertaining whether the offeror has established the alternate item's technical acceptability, and we will not disturb the agency's technical judgment unless it is shown to be unreasonable. HoseCo, Inc., B-225122, Mar. 6, 1987, 87-1 CPD ¶ 258.

There is no requirement that an alternate offeror have previously produced the item, unless the RFP expressly requires proven performance of the alternate as a precondition of award. Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235. The RFP here had no such requirement, nor did it set out any other pre-award qualification test or requirement. This basis of protest therefore is denied. In this respect, as noted above the Navy intends to inspect MTS's product at the contractor's facility.

The protest is dismissed in part and denied in part.

for *Seymour E. Hinchman*
James F. Hinchman
General Counsel