



Comptroller General  
of the United States

523311

Washington, D.C. 20548

## Decision

**Matter:** Ferrotherm Company Inc.

**File:** B-257787

**Date:** November 2, 1994

### DECISION

Ferrotherm Company Inc. protests the rejection of its offer under request for proposals (RFP) No. N00383-94-R-0152, issued by the Naval Aviation Supply Office for the purchase of air turbine nozzle seals, critical parts of the engine used in the F/A 18 aircraft. Ferrotherm contends that the agency improperly failed to consider its offer.

We dismiss the protest.

The RFP, issued on March 10, 1994, as a total small business set-aside, advised potential offerors to submit offers by April 11 on a 3-year requirements contract for the air turbine nozzle seals, which were to be manufactured, tested, and inspected in accordance with "General Electric (99207) part number 6042T05G06 Rev 'AW'." Prior to the issuance of the RFP, potential offerors had been advised in a Commerce Business Daily notice of the procurement that the procurement would be limited to those firms already listed as approved sources for the seals.

Three firms, including Ferrotherm, submitted proposals. At the same time Ferrotherm, who was not an approved source, submitted a Source Approval Request (SAR) for the seal. The buyer forwarded the SAR to the Source Development Division on April 28 with a request for advice on how long it would take to review the SAR. He was told that a review would take a minimum of 60 days. On July 14, Ferrotherm was requested to provide additional information. Also, since the agency did not have revision "AW" to the seal drawings, nor did Ferrotherm, it became necessary to obtain that revision from General Electric.

On May 11, Ferrotherm faxed a letter to the agency in which it stated that because a pricing error had been made by one of its raw material vendors, it was able to offer a "voluntary reduction" in the prices it had offered. The

reduction would have made Ferrotherm the lowest-priced offeror. The agency decided that a correction of the prices Ferrotherm had submitted in its offer could be permitted only through negotiations. Since the seals were needed immediately and award could not be further delayed, the agency decided to award the contract to the low-priced offeror in accordance with Federal Acquisition Regulation (FAR) § 52.215-16, which had been incorporated in the RFP, and which permitted an award on the basis of initial offers without discussions. Award was made on June 24. Since Ferrotherm's protest within 10 days of the award precluded contract performance, see 31 U.S.C. § 3553 (1988), the agency determined that due to the high priority of filling numerous backorders for the seal and the critical need to acquire seals for future immediate needs, "urgent and compelling circumstances significantly affecting the interests of the United States require[d] continued performance" of the contract.

Ferrotherm protests the award on the basis that the agency did not follow the requirements of FAR § 15.607(c) because the agency did not advise Ferrotherm after it was notified that an error had occurred in Ferrotherm's price that Ferrotherm had the option of either withdrawing its proposal or correcting its price. Ferrotherm states that after correction, its price would have been \$526,706 lower than the awardee's.

Since Ferrotherm was not as of the time of award an approved source of the seal and was thus not eligible for award, it lacks the economic interest required under our Bid Protest Regulations to challenge the award. See 4 C.F.R. § 21.0(a) (1994); Technical Plastics Corp., B-230947, Apr. 28, 1988, 88-1 CPD ¶ 415; Precision Kinetics--Recon., B-249975.2, Mar. 12, 1993, 93-1 CPD ¶ 226. In any event, we note that Ferrotherm's arguments are misplaced. FAR § 15.607(c), applicable to mistakes alleged in initial proposals when award without discussions is contemplated, requires that both the existence of the mistake and the proposal actually intended must be established by clear and convincing evidence from the solicitation and the proposal. The price decrease proposed by the protester cannot be established from its proposal and correction is not authorized by the FAR in these circumstances.

The protest is dismissed.



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