



Comptroller General
of the United States
Washington, D.C. 20343

239174

Decision

Matter of: Cormier Textile Products, Inc.

File: B-259814

Date: April 17, 1995

DECISION

Cormier Textile Products, Inc. protests the award of a contract to Protective Plastics, Inc. (PPI) under request for proposals (RFP) No. 95-P-002, issued by the Office of Foreign Disaster Assistance (OFDA), Agency for International Development, for 3,254 rolls of plastic sheeting to be used in disaster and refugee situations in Rwanda, Angola, Croatia, the Philippines, Liberia, and Colombia.

We dismiss the protest.

The RFP was issued on December 5, 1994, and modified on December 7. The RFP contained the following provision:

"Award will be made on the basis of price, ability of contractor to perform tasks as specified, and on the quality of the product and ability of contractor to meet OFDA specifications for product. After award is made and first delivery of 200 rolls received at OFDA Stockpile, OFDA will select a random sample from the first delivery/first production run. Selected article will be subject to testing of compliance with OFDA product specifications by an independent laboratory. Should selected article fail testing in part or in whole, OFDA may rescind award from contractor. OFDA will have option of rejecting entire lot or of purchasing initial lot only. OFDA may then award contract to next lowest bidder and first article will be required from second contractor, subject to same testing procedure as above."

Three firms, including Cormier and PPI, submitted proposals by the December 9 closing date. Award was made to PPI, the low offeror, on December 9 for a total price of \$715,229.20 (\$219.80 per roll).

Cormier claims that the agency evaluated PPI's offer only for price, improperly failing to consider the "quality of

the product," or the firm's ability "to perform tasks as specified," or "to meet OFDA specifications for [the] product," as provided for in the RFP. Cormier maintains that PPI is not a responsible contractor, and that tests run on plastic sheeting the firm furnished under a 1991 contract showed that the sheeting does not meet the specifications under the RFP here. Cormier concludes that a proper evaluation would have led to rejection of PPI's offer.

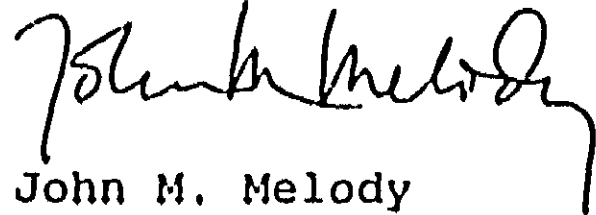
We find nothing improper here. The nonprice factors regarding the offeror's ability to perform properly by furnishing an acceptable product relate to the offeror's responsibility, that is, the offeror's ability to perform satisfactorily should it receive the contract. There was no requirement that the agency also consider these matters under a technical evaluation. Cormier challenges PPI's responsibility based on the firm's alleged failure to furnish acceptable sheeting under a prior contract, but the determination of a firm's responsibility is a matter within the discretion of the contracting officer; we will review a challenge to an affirmative responsibility determination only when definitive responsibility criteria allegedly were not applied, or there is a showing that the determination resulted from possible agency fraud or bad faith. 4 C.F.R. § 21.3(m)(5) (1995). Neither exception applies here.¹

The RFP also stated that the quality of the product would be considered in the award. However, reading the evaluation provision as a whole, we think it was clear that this consideration was to come into play only after contract award. In this regard, the provision set forth a detailed explanation of the steps the agency intended to take after award to assure that the contractor's product met the specifications, and the steps it would take--recision of the contract and award to the next low offeror--in the event the awardee's product was found noncompliant. In contrast, there was no explanation as to how quality would be judged prior to award. Indeed, since offerors under this RFP were not required to specify a particular plastic sheeting product but, rather, were offering to supply a product in accordance with a detailed specification, it is not clear how quality could have been assessed before award (absent a

¹Cormier raises allegations of bad faith in its comments to the agency report and supplemental submissions. However, protest grounds raised for the first time in comments on the agency report are untimely where the basis for the grounds is known to the protester at the time of initial filing, as in this case. See Spire Corp., B-258267, Dec. 21, 1994, 94-2 CPD ¶ 257.

sample, which was not required).² We conclude that there was no requirement that the agency assess the quality of the offerors' products before making award. It therefore was proper for the agency to make award to PPI based on its low price after determining that PPI was responsible.

The protest is dismissed.



John M. Melody
Assistant General Counsel

²In addition, since PPI was offering to meet a specification rather than offering a specific item, and did not take exception to the specifications, the fact that the firm may have furnished nonconforming items under a prior similar contract would be irrelevant (aside from responsibility considerations) to an evaluation of PPI's offer under this RFP.