Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Materials Management Group, Inc.

File: B-261523

Date: September 18, 1995

C. Paul Lo for the protester.
Riggs L. Wilks, Jr., Esq., and Thomas J. Duffy, Esq., Department of the Army, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging specifications requiring minimum 1,000 and 6,000 gallon capacities for oil/water separators as inadequate to meet performance requirements is denied where manufacturers' literature establishes that standard separators are available at the minimum sizes specified that meet the performance requirements, and the protester's allegation is based on an erroneous assumption concerning the performance requirements.

DECISION

Materials Management Group, Inc. (MMG) protests the specifications for oil/water separators identified in invitation for bids (IFB) No. DAHA16-95-B-0003, issued by the Department of the Army, Louisiana National Guard. MMG argues that the minimum sizes for the separators specified in the solicitation are inadequate to meet the IFB's stated performance requirements.

We deny the protest.

The IFB, issued April 21, 1995, requires the contractor to remove and replace six oil/water separators designed primarily for typical storm water run-off applications and the occasional wash down of vehicles. The IFB specifies that the influent (incoming) oil mixture will contain 1,000 parts per million (ppm) of non-emulsified oil and requires that the effluent oil mixture which exits the separators contain no more than 15 ppms. To meet the 15 ppms effluent requirement and the anticipated

flow rates for both applications,[1] the IFB specifications require two types of underground, double-walled separators: one type must have a minimum 6,000 gallon capacity to meet the 675 gpm inflow rate; the other type must have a minimum 1,000 gallon capacity to meet a range of 80 to 130 gpms inflow rate.

MMG challenges the minimum 1,000 and 6,000 gallon size requirements, arguing that these sizes are too small to meet the 15 ppm discharge performance requirement. The protester bases its argument on a memorandum from a representative of a tank manufacturer. In the memorandum, the representative argues that the separators are too small based on assumptions regarding the size of oil particles which would result from mechanical emulsion of oil through the use of a pressure washer or hose. The representative argues that the emulsified oil droplets resulting from using a pressure washer are much smaller than the droplets which run off in normal storm water usage. Because these emulsified oil particles are so small, they require a longer time to separate and thus, require a larger separator. The representative states that "[a]ssuming type of operation to be a pressure wash application, to meet all the worst case conditions . . . for these flow rates, the [oil/water separator] unit would have to be much, much larger . . . in the range of 20,000 gallon and 30,000 gallon size. . . ."

The memorandum also states that the representative spoke with the design engineer who stated that "in actual operation, the worst case conditions would never happen simultaneously" and that flow rates would not be as high as indicated in the solicitation. MMG argues that these statements conflict with the solicitation and make it impossible to address the agency's needs.

An agency is required to specify its needs in a manner designed to promote full and open competition. Tennessee Apparel Corp., B-253178.3; B-253178.4, Sept. 21, 1993, 94-1 CPD ¶ 104. Determination of the agency's minimum needs and of which products meet those needs are properly the agency's responsibility; government procurement officials who are familiar with the conditions under which supplies and equipment have been and will be used, are generally in the best position to

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[1]While the agency considered projected flow rates from its design engineer for both applications, it used the higher, more varied flow rates of storm water run-off applications as the worst case condition. Specifically, the engineer projected that the flow of storm water run-off would vary from 80 to 675 gallons per minute (gpm) due to the size of the exposed surface and the conditions which exist at different sites. In the vehicle washdown application, projected flow rates were based on a typical 3/4-inch hose which has a normal flow of 3 gpm. Assuming a maximum of four hoses, the design engineer projected a flow of 12.5 gpm. The protester does not question these projected flow rates.

make these determinations. Astro-Valcour, Inc., B-257485, Oct. 6, 1994, 94-2 CPD ¶ 129. Our Office will not question an agency's determination of its minimum needs, and the resulting solicitation specifications, unless the record clearly shows that the determination was without a reasonable basis. Id.

In its report, the agency submitted to our Office statements from its engineer and engineering consultants and manufacturers' technical literature from Xerxes Corning Corporation and Owens-Corning to support its determination that the specified 1,000 and 6,000 gallon separators meet the stated performance requirements. These statements and the technical literature show that based on a storm water run-off application, the anticipated 1,000 ppm influent level, and the desired 15 ppm output, a 6,000 gallon separator is sufficient to meet the projected 675 gpm inflow rate and a 1,000 gallon separator will meet the projected 80 to 130 gpm inflow rate. In its comments, the protester neither rebuts this explanation, nor provides any evidence in support of its allegation.

Additionally, the Army points out that the memorandum the protester relies on is based on the erroneous assumption that a pressure washer that will result in emulsified oil influent will be used to "blast" the oil particles into fine droplets, requiring more time and a larger tank for separation. In fact, as noted above, the specifications anticipate separating storm water run-off with only an occasional washdown of vehicles and therefore specify that the influent oil/water mixture will be non-emulsified (i.e., not resulting from a pressure washer). The effect of the protester's mistaken assumption is to substantially exaggerate the size required for the separation tanks.

Finally, as to MMG's allegation that the design engineer stated that "the worst case conditions would never happen simultaneously" and that flow rates were overstated, we note that when a provision is included in the solicitation, a bidder relies on oral explanations--especially those which are inconsistent with the solicitation's express provisions--at its own risk. Burnham Serv. Co., B-254525, Nov. 17, 1993, 93-2 CPD ¶ 281. Here, the specifications are clear and specific and there is no indication that the agency did not anticipate the worst case conditions for each application as specified in the solicitation, or that the flow rates in the IFB were overstated; oral

advice to the contrary does not operate to amend the solicitation or otherwise legally bind the agency. See Hugo Key & Son, Inc.; Alco Envtl. Servs., Inc., B-251053.4, B-251053.5, July 15, 1993, 93-2 CPD ¶ 21.

The protest is denied.

\s\ Christine S. Melody
for Robert P. Murphy
General Counsel