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Decision

Matter of: Chase Supply, Inc- d/b/a Chase Defense Partners

File: B-423244

Date: March 11, 2025

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DIGEST

Protest arguing that the agency improperly waived first article test requirements for the awardee is denied where the decision to waive first article testing was reasonable and in accordance with applicable procurement law and regulation.

DECISION

Chase Supply, Inc.-d/b/a Chase Defense Partners, a small business of Hampton, Virginia, protests the award of a contract to Crushproof Tubing Co., a small business of McComb, Ohio, under request for quotations (RFQ) No. SPE7MX-25-24-R-X017, issued by the Defense Logistics Agency (DLA) for air duct hose assemblies. The protester contends that the agency unreasonably waived first article testing (FAT) approval for the awardee.

We deny the protest.

BACKGROUND

On April 30, 2024, DLA issued the RFQ for the supply of an indefinite quantity of air duct hose assemblies identified by National Stock Numbers (NSN) 4720-00-930-5974 (5974) and 4720-01-207-8357 (8357). Agency Report (AR), Tab 1, RFQ at 1, 5-7, 14. The RFQ was issued as a small business set-aside utilizing the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 12 and subpart 13.5. *Id.* at 1, 3-4.

Relevant here, the RFQ required NSN 5974 to be manufactured in accordance with military specification MIL-PRF-32616(1). *Id.* at 5-6. The RFQ also required for vendors under both NSNs to have FAT approval, in accordance with FAR clause 52.209-3, which was incorporated into the RFQ. *Id.* at 15-16. Pursuant to FAR clause 52.209-3(h), the RFQ authorized the agency to waive the FAT requirement as follows:

The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government.

FAR clause 52.209-3(h).

Both the protester and awardee submitted quotations. AR, Tab 6, Abstract of Offers at 1. Relevant here, the awardee offered to supply material manufactured by Nationwide Tarps, Inc. (NTI) for NSN 5974. AR, Tab 2, Awardee's Quotation at 12. The contracting officer subsequently made a split award; the protester was awarded a contract for the supply of NSN 8357, and the awardee received a contract for the supply of NSN 5974. AR, Tab 5, Simplified Acquisition Award Documentation at 1. Pursuant to FAR clause 52.209-3, the contracting officer elected to waive the requirement for the awardee to submit FAT approval based on the awardee's successful prior delivery of substantially similar items under a previous contract. AR, Tab 4, Quality Assurance Email at 1. Under the previous contract, the awardee supplied air duct hose assemblies identified by the same NSN through the same manufacturer, NTI. AR, Tab 9, Awardee FAT Report at 2; Tab 11, FAT Approval Letter at 1. The awardee previously received FAT approval from the agency on and successfully performed the prior contract. AR, Tab 11, FAT Approval Letter at 1; Tab 12, Previous Contract Goods Receipt at 1. On December 23, 2024, Chase filed the instant protest.

DISCUSSION

Chase contends that the agency erred in waiving FAT approval for the awardee pursuant to FAR clause 52.209-3(h). The protester argues that the FAR clause only allows for waiver on a subsequent contract where the contractor had previously successfully secured FAT approval on a prior contract. In this regard, notwithstanding that the awardee's supplier had previously obtained FAT approval for the same item on a prior contract, the protester contests the reasonableness of the prior approval. Specifically, the protester argues that the awardee previously received FAT approval through a "less rigorous" standard than applied to the protester's product, and therefore should not have been eligible for waiver of the requirement for this procurement.

The agency contests the protester's interpretation of FAR clause 52.209-3(h) as previously requiring FAT approval before the agency can elect to waive approval for future contracts. The agency argues that the plain language of the clause does not specifically require prior FAT approval but allows for waiver "where supplies identical or

similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government.” Memorandum of Law (MOL) at 1 (quoting FAR clause 52.209-3(h)). In any event, the agency further contends that even assuming the protester’s interpretation of the clause is correct, the awardee’s supplier nevertheless also had previously obtained FAT approval for the identical product, and, thus, the waiver here was still justified. *Id.* at 3. For the reasons that follow, because we find that the agency reasonably waived the requirement for FAT approval based on the previously granted FAT approval, we find no basis on which to sustain the protest.

In reviewing protests challenging an agency’s evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency’s judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; *Orion Tech., Inc.*, B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4-5.

As addressed above, the parties expended considerable effort debating the question of whether FAR clause 52.209-3(h) allows for a waiver if the offeror/contractor had previously successfully delivered and the government had accepted identical or similar items, or whether the offeror/contractor must have also previously secured FAT approval for the items. The agency argues that the former interpretation necessarily must be correct based on the plain language of the clause, which makes no reference to prior FAT approval, and based on a prior decision of our Office favorably noting the agency’s similar interpretation offered in response to a different protest. See *Chase Supply, Inc.*, B-411528.2, B-411529.2, Dec. 7, 2015, 2015 CPD ¶ 384 at 5 (“FAR clause 52.209-3 does not make the agency’s decision to waive FAT contingent on whether a vendor previously passed the FAT being waived, but rather contemplates that an agency may waive FAT where supplies identical or similar to those called for have been previously furnished by the vendor and have been accepted by the government.”). In contrast, the protester argues for the latter interpretation, arguing that DLA’s interpretation of FAR clause 52.209-3(h) unreasonably reads that section in isolation, and that a reasonable reading of the clause as a whole supports the interpretation that successful delivery and acceptance of items is predicated upon prior FAT approval.

We note that this argument was driven materially by the protester’s initial protest, which was based on incomplete information. Specifically, based on the absence of responsive documents identified by the agency in response to Chase’s earlier-filed Freedom of Information Act request, the protester initially alleged that neither the awardee nor its likely supplier had previously ever received FAT approval for identical or similar items as required here. Protest at 3. During the development of the protest, the agency produced evidence that the awardee’s supplier had in fact obtained FAT approval in the awardee’s successful performance of a prior contract with the agency. Indeed, the FAT waiver at issue here was expressly based on the prior FAT approval. See AR, Tab 4, Quality Assurance Email at 1 (“[NTI] . . . is being waived based on successful completion of [component first article test] on SPE7M4-19P-3389.”). Thus, where the

record reflects that the awardee's supplier previously received FAT approval for the same items being procured here, we need not resolve the parties' disputed interpretation of FAR clause 52.209-3(h).

Turning to the prior FAT approval, the protester argues that it was unreasonable for the contracting officer to rely on the prior approval because it contends that the prior testing was unreasonable, incomplete, and conducted using a less rigorous standard than the one used in testing Chase's product. Specifically, the protester contends that the prior FAT approval included an approved exception and did not otherwise reflect whether the product was tested for an additional specification. Comments at 2. The protester's arguments that the prior FAT approval was improvidently granted, however, fails to state a valid basis of protest.

In this regard, we have explained that our Office does not consider issues relating to the acceptance of a first article or the approval of a pre-production sample, as such matters concern contract administration, a matter not within the purview of our bid protest function since administration of an existing contract is within the discretion of the contracting agency. 4 C.F.R. § 21.5(a); *Hi-Q Env't'l Prods.*, B-229683, Mar. 22, 1988, 88-1 CPD ¶ 295, *recon. denied*, B-229683.2, May 18, 1988, 88-1 CPD ¶ 474; *Casecraft, Inc.*, B-226796.2, June 30, 1987, 87-1 CPD ¶ 647.

Here, the agency based its waiver on the awardee's successful performance of the previous contract, which was for the same material, NSN 5974; manufactured by the same source, NTI; and governed by the same military specification, MIL-PRF-32616(1) as the instant RFQ. AR, Tab 4, Quality Assurance Email at 1; Tab 11, FAT Approval Letter at 1; Tab 12, Previous Contract Goods Receipt at 1. Even assuming that the awardee's prior successful performance on its prior contract delivering the same item to the government alone was insufficient to justify the waiver, and rather the agency needed to also require a prior FAT approval, we discern nothing in the clause that would require the contracting officer to effectively relitigate the merits of a prior FAT approval as a precondition to granting the waiver. Absent some compelling countervailing evidence that the proposed product to be delivered will fail to comply with material solicitation requirements, we find no basis to question the contracting officer's reliance on the prior FAT approval. Therefore, we have no basis to find that the awardee's airduct hose assemblies were not eligible for FAT waiver or that the agency's evaluation was otherwise unreasonable.

The protest is denied.

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General Counsel