



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hilti, Inc.

File: B-265662

Date: December 19, 1995

Alison L. Doyle, Esq., McKenna & Cuneo, for the protester.
Hiltrud J. McInturff for Liebig International, Inc., an interested party.
Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.
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General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of award to offeror of alternate product is sustained where agency failed to apprise offerors that interchangeability for purposes of only one limited application was required.

DECISION

Hilti, Inc. protests the award of a contract to Liebig International, Inc. under request for proposals (RFP) No. SPO500-95-R-0100, issued by the Defense Logistics Agency (DLA) for expansion shields. The expansion shields are used to anchor items to concrete. Hilti contends that the agency improperly determined that the Liebig item and the item offered by a third manufacturer, Rawl Plug, were interchangeable with the brand name Hilti part requested by the solicitation. The protester further argues that if the Liebig and Rawl Plug parts in fact satisfy the agency's requirements, the agency overstated its needs by requesting an item interchangeable with its brand name product.

We sustain the protest.

BACKGROUND

The RFP, as amended, requested offers on 37,900 expansion shields, Hilti Part No. HSL M12/50, also identified by National Stock Number 5340-01-371-2434. The solicitation did not specify the application for which the anchors were being acquired. The RFP incorporated DLA's "Products Offered" clause, which allows firms to offer alternate products which are physically, mechanically, electrically, and functionally interchangeable with the product identified in the solicitation. Award was to be made to the offeror of an acceptable product whose price was most advantageous to the government. Nine offerors responded to the RFP by the March

31, 1995, closing date. The six low offerors, their prices, and the products they offered, were as follows:

<u>Offeror</u>	<u>Unit Price</u>	<u>Product Offered</u>
Liebig	\$2.14	Liebig P/N LAH 34.558
Cast Sales	\$3.29	Rawl Plug P/N 6954
Apex Pinnacle	\$3.30	ANKR-TITE 5/8 Female Wedge Anchor
Kampi Components	\$3.85	Liebig P/N LAH 34.558
San Diego Supply	\$4.04	Rawl Plug P/N 6954
Hilti	\$4.1985	Exact Item

After reviewing data describing the Liebig, Rawl Plug, and ANKR-TITE anchors, the agency's technical specialist determined that both Liebig P/N LAH 34.558 and Rawl Plug P/N 6954 were acceptable, but that the ANKR-TITE part was not. He did not record his analysis in reaching this conclusion; thus, there is no evidence in the record as to which characteristics of the Hilti part he considered in comparing the Liebig and Rawl anchors to it.¹

The agency conducted discussions with all the offerors of technically acceptable products and requested best and final offers. Liebig remained the low offeror, with a unit price of \$2.14; Cast Sales, which lowered its unit price to \$2.94, remained second low. Hilti, which did not revise its unit price of \$4.1985, was fifth low. On July 28, the agency awarded a contract to Liebig.

¹According to the agency, the technical specialist made pencil notes, which he discarded after entering his determination in the computer records.

ANALYSIS

DLA argues that its technical specialist reasonably determined the Liebig anchor to be interchangeable with the specified Hilti part.² In this regard, the agency contends that the two anchors are similar in design³ and that the Liebig part has a more favorable ratio between its tension and shear working loads compared to ultimate loads. The agency also notes that, although unknown to the contracting officer at the time of evaluation, the Air Force had developed a specification for anchor bolts to be used to secure fiberglass mats to concrete pavement, which stated that both Hilti P/N HSL M12/50 and Liebig P/N LAH 34.558 would be acceptable without further testing.

Hilti contends that the evidence presented by the agency does not establish that the Liebig part is interchangeable with its part. In particular, the protester asserts that the Liebig part is inferior to its part with respect to two performance characteristics: clamping capability and dynamic performance. Hilti argues that its anchor will provide full clamping force even if a gap of up to 8 millimeters exists between the concrete surface and the device being fastened, due to its incorporation of a special collapsible plastic section not present on the Liebig anchor. The Liebig anchor, in contrast, could lose up to 60 percent of its clamping capability if such a gap exists, according to the protester. Hilti further argues that its anchor is superior to Liebig's in terms of dynamic performance due to its close-tolerance machined expansion sleeve, which contains cross-hatching. Hilti contends that while it manufactures other anchors with comparable, or higher, tensile and shear capabilities, their expansion sleeves--like Liebig's--are a lower-cost smooth piece, which provides limited dynamic capabilities.

²The agency offers no rebuttal to the protester's additional argument that the other alternate item found acceptable--the Rawl Plug part--is not interchangeable with the specified Hilti part. Given our conclusion, discussed in detail below, that the solicitation overstated the agency's minimum needs, we need not decide whether the agency properly concluded that the Rawl Plug part is interchangeable with the Hilti part.

³The agency concedes that the outside diameter of the Liebig anchor exceeds that of the Hilti part and that a larger hole would therefore have to be drilled to accommodate the Liebig anchor. The agency contends that this difference is inconsequential, however, since the Air Force bases that will be installing the anchors will have on hand drill bits capable of drilling holes large enough to accommodate the Liebig anchors.

In response, the agency concedes that it never considered whether the Hilti anchor might be superior to the Liebig anchor in terms of dynamic performance and clamping capability. It contends that this is of no consequence, however, since it did determine that both anchors would meet its minimum needs for purposes of the intended application, i.e., runway repair.

An agency may properly express its needs by specifying a particular product and affording other firms an opportunity to submit offers for alternate products (as DLA has done by use of its Products Offered clause) where, as here, the agency has insufficient technical information to more adequately describe its requirements. Ampex Recording Media Corp., B-247722; B-247801, July 2, 1992, 92-2 CPD ¶ 2, aff'd, B-247722.2; B-247801.2, Jan. 28, 1993, 93-1 CPD ¶ 71. When using this method of describing its needs, agencies may not relax the requirement of the Products Offered clause that an alternate item be physically, mechanically, electrically, and functionally interchangeable with the named product. Id. This means that an agency does not have the discretion to accept an item that is not interchangeable with the named item based on a finding that it otherwise satisfies the agency's minimum needs. Hobart Bros. Co., B-222579, July 28, 1986, 86-2 CPD ¶ 120, modified, B-222579.2, Sept. 19, 1986, 86-2 CPD ¶ 323. Similarly, we think that unless offerors have been placed on notice that interchangeability for purposes of one limited application is all that is required, an agency may not accept as an alternate an item which has not been determined to be interchangeable for all applications. Without being so advised, potential offerors do not know that the agency requires an alternate product to be interchangeable with only those elements of the named product relating to its intended use, and instead reasonably would assume that they must offer either the named item or an alternate which is interchangeable in all respects with the named item.

That is precisely what happened here. As noted above, the protester asserts that the Liebig part is inferior to the named Hilti part with respect to clamping capability and dynamic performance. The agency does not rebut this assertion; in fact, the agency concedes that it did not consider whether the Liebig part was interchangeable with the Hilti part in these areas. Instead, the agency states that it did not really require an anchor with all of the characteristics of Hilti P/N HSL M12/50; it required only an anchor that would adequately anchor runway pads. In other words, in requesting only parts physically, mechanically, electrically, and functionally interchangeable with the specified Hilti part, the agency overstated its needs. See id. This resulted in prejudice to Hilti, which claims that had it realized that the agency did not require an anchor with the dynamic performance and

clamping capabilities of its P/N HSL M12/50, it could have offered a lesser quality, lower-priced anchor from its KwikBolt line.⁴

Accordingly, we sustain Hilti's protest. We recommend that the agency terminate the award to Liebig and resolicit the requirement using a specification which reflects its actual needs.⁵ We also find that Hilti is entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1995). In accordance with 4 C.F.R. § 21.6(f), Hilti's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

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⁴Although DLA contends that the Hilti KwikBolt would not meet its needs under this solicitation, the protester has effectively rebutted all of the arguments proffered by the agency as to why its KwikBolt would be unsuitable. For example, DLA argues that the Hilti 3/4-inch KwikBolt would not meet its requirement for a bolt with a length not less than 5 inches and not greater than 6 inches since it comes in a variety of lengths, some shorter than 5 inches and some longer than 6 inches. In response, Hilti points out that one of the lengths that the 3/4-inch KwikBolt comes in is 5-1/2 inches, which would satisfy the agency's requirement.

⁵For example, DLA could consider using the Air Force specification for anchor bolts to which it repeatedly referred during the course of this protest. We recommend that, before drafting the specification, DLA verify with the requesting activities that they do intend to use the bolts to anchor runway pads. As the protester points out, there is no evidence in the record that the requesting activities ever specified their intended use for the anchors. In addition, the protester has effectively rebutted DLA's argument that this is the only purpose for which the anchors may be used.