



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Saturn Industries

File: B-261954.3

Date: January 5, 1996

George W. Ash, Esq., and William J. Lewandowski, Esq., Dykema Gossett, for the protester.

Gwendolyn M. Hoover, Esq., Defense Logistics Agency, and Arthur M. Boley, Esq., Department of the Army, for the agencies.

Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably determined that qualification testing of a transmission component for the Bradley Fighting Vehicle is required where the component is a critical item, the failure of which would create a serious safety risk.
2. Protester has had reasonable opportunity to meet qualification requirements where it has known of those requirements for more than 2 years.
3. Qualification requirements in solicitation do not represent unequal treatment of protester where previously approved sources have similarly demonstrated the operational capabilities of their components.

DECISION

Saturn Industries protests certain provisions of solicitation No. SPO750-95-R-0213 issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency (DLA), seeking proposals to provide 515 hydraulic motor race assemblies, national stock number (NSN) 2520-01-109-4375, to be used in the transmission of the M2 and M3 Bradley Fighting Vehicle. Saturn raises various issues regarding the solicitation's qualification requirements for a component of the race assemblies.

We deny the protest.

BACKGROUND

The Solicitation

On May 5, 1995, DLA published a notice in the Commerce Business Daily (CBD) announcing its intention to purchase 515 race assemblies, NSN 2520-01-109-4375. The solicitation was issued on May 22. The solicitation stated that one of the assembly components (the race) was source controlled,¹ and referenced drawings identifying Martin Marietta Defense Systems² and Kaydon Corporation as the only approved sources of this component.³ Specifically, the solicitation stated

"Qualification testing of [the race component] will require a 100 hour dynamometer test (\$75,000) [and] 6000 mile on-vehicle test (\$25,000) and \$25,000 for analysis and final report before source approval can be given. . . . Contractor would need to supply eight [race components] . . . along with the above funds, to the government for testing. Testing would take six to nine months."

On July 7, Saturn filed a protest with our Office challenging the validity of the qualification requirements. The closing date for submission of proposals was July 10; Saturn did not submit a proposal. Following the agency's response to its July 7 protest, Saturn filed supplemental protests on August 23 and August 25.

Saturn's Prior Contract

In December 1992, Saturn was awarded a contract to supply the race assemblies, NSN 2520-01-109-4375, which are being procured under the protested solicitation.⁴ There, as here, the solicitation provided that the race components of the race

¹The solicitation also stated that a second component (the bushing) was source controlled. The requirements regarding that component are not at issue in this protest.

²Martin Marietta is now Lockheed Martin. To avoid confusion, we refer only to Martin Marietta throughout this decision.

³The agency explains that Kaydon is the only currently approved manufacturer of the race component. Martin Marietta was identified as an approved source because it is the corporate successor to General Electric Corporation, the original equipment manufacturer of the Bradley transmission; as such, Martin Marietta maintains a supply of the Kaydon-manufactured race components.

⁴Contract No. DLA 770-93-C-3520 was awarded to Saturn on December 15, 1992.

assemblies were source controlled, and identified Martin Marietta and Kaydon Corporation as the only approved sources. By letter to the agency dated December 22, 1992, Saturn requested waiver of those source control requirements. That request was formally denied by letter dated July 19, 1993.

On February 4, 1993, Saturn submitted a request to the U.S. Army Tank-Automotive Command (TACOM) to become an approved source for the race component.⁵ By letter from TACOM's Small Business Liaison Office dated June 8, 1993, Saturn was advised of specific testing requirements that would be necessary in order for it to become an approved source of the component. Those requirements are identical to the qualification requirements in the solicitation now being protested. Specifically, Saturn was advised that, with regard to NSN 2520-01-109-4375, qualification testing would require a "100 hour dyno test," as well as a "6000 mile on-vehicle test." The June 8, 1993, letter further stated, "Saturn would need to supply eight parts, four per [transmission]," that "testing would take 6-9 months," and that "Saturn would be required to pay for all costs associated with qualification."

Despite the clear statement that Saturn would not become an approved source until testing of its component had been performed, Saturn did not submit any race components for testing. Rather, Saturn subsequently made repeated requests for waiver of the source control requirements to various government officials. By letters to Saturn dated July 19, 1993, September 15, 1993, December 10, 1993, and February 8, 1994, DLA reiterated the fact that the testing requirements would not be waived. Each of these letters specifically referenced NSN 2520-01-109-4375. Ultimately, Saturn made no deliveries of the race assemblies under its prior contract; that contract was terminated for the convenience of the government on July 28, 1994.

DISCUSSION

Saturn first protests that the testing requirements for the race component, that is, the 100-hour dynamometer test and 6,000-mile on-vehicle test, lack a reasonable basis and, therefore, unreasonably restrict competition in violation of 10 U.S.C. § 2304 (1994).

The agency responds that the testing requirements are necessary to demonstrate the component's capability to perform under actual operating conditions. During operation, the race assembly is subjected to high alternating stresses and may experience reversing rotating piston load, along with varying accelerations and

⁵Although DCSC manages acquisitions of the race assembly, NSN 2520-01-109-4375, TACOM is the engineering support activity and program manager for the Bradley Fighting Vehicle. As such, TACOM is responsible for qualifying any new source.

decelerations of the ball pistons. Accordingly, dimensional, visual, and metallurgical inspections were considered insufficient, and the agency concluded that demonstration testing was necessary.⁶ Further, the agency explains that the race assemblies are "safety critical," inasmuch as component failure during operation could result in personnel injury from flying debris as well as cause sudden loss of vehicle control.⁷

Saturn criticizes the agency's determination regarding the testing requirements on the basis that the agency relied on input from Martin Marietta in making its determination.⁸ Nonetheless, Saturn offers neither evidence nor argument that the above-stated facts are inaccurate or that the risks identified are inconsequential or otherwise should not be considered.

Generally, an agency's determination that testing is required is a matter within the technical competence of the procuring agency, and we will not disturb the agency's position in that respect in the absence of clear evidence indicating the position is unreasonable. Hill Aviation Logistics, 67 Comp. Gen. 244 (1988), 88-1 CPD ¶ 140; Electro-Methods, Inc., B-255023.3; B-255023.4, Mar. 4, 1994, 94-1 CPD ¶ 173. Here, the record identifies specific safety concerns which led to the agency's determination that operational testing was necessary. The record further indicates that there were performance problems associated with the race component during

⁶There are references in the record to operational problems that occurred during the development of the race assembly.

⁷With regard to the "safety critical" nature of the race assembly, the agency references Federal Acquisition Regulation (FAR) § 46.203, which states

"Criteria for Use of Contract Quality Requirements"

"The extent of contract quality requirements . . . required under a contract shall usually be based upon the classification of the contract item (supply or service) as determined by its technical description, its complexity, and the criticality of its application.

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"(c)(1) A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission."

⁸Martin Marietta provides TACOM with engineering support services for the Bradley Fighting Vehicle under a systems technical support contract.

its development stage. Accordingly, Saturn's general assertion that the testing requirements are unnecessary fails to establish that TACOM's contrary determination, based on the provisions of FAR § 46.203, is unreasonable. There is simply no basis to question the agency's determination regarding the testing requirements.

Saturn next protests that it has not been given a reasonable opportunity to qualify as an approved source. Saturn notes that although the solicitation requires delivery of the race assemblies within 150 days following award qualification testing is expected to take from 6 to 9 months. On this basis, Saturn complains "it is not possible for [Saturn] to compete . . . if its offered product is not qualified, or at least one to four months into testing, at the time of award."

When a contracting agency restricts a contract award to only approved sources and imposes qualification requirements, unapproved sources should be given a reasonable opportunity to qualify. 10 U.S.C. § 2319 (1994). However, an agency is not required to delay a procurement solely to provide a potential offeror an opportunity to demonstrate its ability to become approved. 10 U.S.C. § 2319(c)(5); Tura Mach. Co., B-241426, Feb. 4, 1991, 91-1 CPD ¶ 114. This is particularly true where the offeror contributes to its failure to obtain timely source approval. See The Purdy Corp., B-259066, Mar. 1, 1995, 95-1 CPD ¶ 120; Texstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273.

As discussed above, Saturn was advised by letter dated June 8, 1993, of the precise testing requirements for the race assemblies, NSN 2520-01-109-4375, to which it now objects. At that time Saturn was requested to submit components for testing; it did not do so. Further, as indicated, Saturn was repeatedly advised by the agency that the source control requirements would not be waived. Despite Saturn's protest, Saturn has not yet submitted any race components to the government for testing.⁹ On this record, Saturn's protest that it has not been given a reasonable opportunity to comply with the qualification requirements is without merit.¹⁰

⁹The record indicates that Saturn has not yet manufactured any race components.

¹⁰Saturn complains that TACOM has not agreed to bear the component testing costs for Saturn. In this regard, offerors are generally required to bear their own costs of qualification testing. See 10 U.S.C. § 2319(b)(3); Federal Acquisition Regulation (FAR) § 9.202(a)(1)(ii). The law provides that, under certain circumstances, an agency may bear the testing costs for a small business concern if the agency determines that such additional qualified source is likely to result in a net cost savings to the government due to increased competition for future requirements. See 10 U.S.C. § 2319(d)(1)(B); FAR § 9.204(a)(2). Saturn submitted a request that

(continued...)

Saturn next protests that it is being subjected to unequal treatment in comparison to Martin Marietta and Kaydon. Saturn asserts that the race components being provided by the previously approved sources were not subjected to the testing requirements that are now required. Again, the record contradicts Saturn's assertions.

First, the agency states that, in fact, the race assemblies currently being provided were developed between 1984 to 1986, and that, during that period, the race component was subjected to a series of tests and inspections integrated within the development process. More significantly, the agency notes that the operational testing requirements to which Saturn objects are intended to demonstrate the component's capability to perform under operating conditions, and that the components currently being provided have been, and continue to be, repeatedly tested under actual operating conditions. Although the protester complains that there is inadequate documentation regarding the developmental testing that occurred from 1984 to 1986,¹¹ Saturn offers no rational argument to support the unfounded assertion that, in developing the race assembly as a new component, the agency failed to subject it to operational testing. Further, Saturn offers no rebuttal of the agency's statement that the currently fielded components have repeatedly demonstrated their capability to perform under actual operating conditions and, as

¹⁰(...continued)

the agency bear its testing costs 1 day prior to filing its protest. The agency states that it is currently considering the request. To the extent Saturn's protest is based on an assumption that the agency will decline to bear the testing costs, the protest is premature. Protests which merely anticipate allegedly improper agency action will not be considered. See, e.g., Jantec, Inc., B-243192, Mar. 14, 1991, 91-1 CPD ¶ 289.

¹¹The agency states that most of the documentation relating to that development period no longer exists.

such, have been subjected to essentially the same testing requirements to which Saturn now objects. Accordingly, Saturn's assertions that the solicitation's testing requirements represent unequal treatment are without merit.¹²

The protest is denied.

Comptroller General
of the United States

¹²Saturn also asserts that an organizational conflict of interest exists because, under Martin Marietta's system technical support contract, Martin Marietta will assist TACOM in the assessment of Saturn's race component. Since Saturn has not yet submitted its component to the agency for testing, its speculation that the agency will be improperly prejudiced by input from Martin Marietta merely anticipates allegedly improper agency action. See Jantec, Inc., *supra*. In any event, the agency notes that TACOM, not Martin Marietta, will make the final determination with regard to qualification of Saturn as an approved source, thereby complying with its obligation to avoid, neutralize or mitigate any potential conflict of interest that might exist. See FAR §§ 9.501, 9.504, 9.505; D.K. Shifflet & Assocs., Ltd., B-234251, May 2, 1989, 89-1 CPD ¶ 419.