

PRO. LAW I
D. Schwimer



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-192901

DATE: February 9, 1979

MATTER OF: Metal Art, Inc. DLG00860

DIGEST:

[Allegation that RFP Did Not Contain Adequate Specifications or Standards]

1. Telex protesting award which was received at 11:23 a.m., September 15, 1978, when closing time for receipt for proposals was 3 p.m., September 15, 1978, is timely filed and will be considered on merits.
2. Where adequate data is not available to conduct competitive procurement, GAO generally will take no exception to sole-source award to original manufacturers; however, where there is nothing in record to show that Government has attempted to obtain data from original manufacturers, alternatives for obtaining data are suggested.

Metal Art, Inc. (Metal Art), has protested any awards under requests for proposals (RFP) Nos. DLA700-78-R-2097, -2098 and -2112 issued by the Defense Logistics Agency (DLA), Defense Construction Supply Center, Columbus, Ohio.

The RFP's were issued on August 25, 1978, with a closing date for receipt of proposals of September 15, 1978, at 3 p.m. While DLA argues that the protest was untimely filed with our Office, this argument is based on a copy of the Metal Art telex, which we forwarded to the contracting agency, which showed it was received in our Office at 3:48 p.m., on September 15, 1978. However, this telex is a copy of Metal Art's original telex which we received at 11:23 a.m. on that date. Accordingly, the protest was timely filed prior to the time set for receipt of proposals and will be considered on the merits. 4 C.F.R. § 20.2(b)(1) (1978).

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RFP-2097 was for seat and guide bushing assemblies identified as Gimpel Machine Works Part Nos. N169-1 and NK210-1. RFP-2098 was for valve seats identified as Dresser Industries Part No. 83757. RFP-2112 was for valve disks identified as Dresser Part No. 83936.

Metal Art protested that the RFP's did not contain any specifications or standards upon which it could base a proposal. It stated that the solicitation should have been on a "brand name or equal basis" with some form of identifying characteristics. DLA responded that the procurements were negotiated under 10 U.S.C. § 2304(a)(10) (1976), which authorizes procurement on that basis "for property or services for which it is impractical to obtain competition," because there are no drawings or specifications available for the Dresser parts and that, while there are drawings for the Gimpel part, there are not sufficient funds, personnel and facilities available to undertake reverse engineering to determine if the drawings are adequate for evaluating offers. Further, DLA stated that the RFPs should have been limited to the original manufacturers because of the critical nature and function of the relief valves in which the repair parts are used. Metal Art disagrees with the designation of parts as critical on the basis that the item for which they will be used is critical.

Whether the parts were properly designated as critical is not germane. A contracting officer could not properly reject an unsolicited offer without considering what is offered. Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD 45; D. Moody & Co., Inc.--Request for Reconsideration, May 11, 1977, 77-1 CPD 333; 52 Comp. Gen. 546 (1973).

The question then in the context of the immediate case is whether DLA has done everything reasonably possible to obtain data for the procurements involved, since Metal Art is prepared to agree that neither DLA nor the agency for which the parts are being procured has the data now. Of course, the lack of sufficient data would preclude the use of a "brand name or equal" provision. 52 Comp. Gen., supra. Moreover, as we

have no basis to question the agency's position that it is unable to reverse engineer the Gimpel part because of other demands on agency funds, personnel and facilities, this aspect will not be considered. Bio Marine Industries, et al., B-180211, August 5, 1974, 74-2 CPD 78.

Generally, in determining the propriety of a sole-source solicitation, the standard to be applied is one of reasonableness--unless it is shown that the contracting agency acted without a reasonable basis, our Office will not question the solicitation. Pioneer Parachute Co., Inc., B-190798, B-191007, June 13, 1978, 78-1 CPD 431. Where adequate data is not available to an agency to enable it to conduct a competitive procurement we will take no exception to a sole-source award even where we recommend that the contracting agency consider initiating efforts to broaden competition in the future. B-173063, September 22, 1971. Where the needs of the Government can only be satisfied by a single source, the Government is not required to compromise those needs in order to obtain competition. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214.

As Metal Art has indicated, there is nothing in the record to show that the Government has attempted to obtain data from the manufacturers involved. Since award has not been made to the subject manufacturers, we suggest that this avenue be explored. If time will not permit a delay for all of the quantities involved, consideration should be given to making an award for a small number of units together with reprourement data. These suggestions are being brought to the attention of the Director of DLA by separate letter of today.



Deputy Comptroller General
of the United States