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DECISION



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

FILE: B-196242

DATE: March 5, 1980

MATTER OF: Varian Associates, Inc. -CNG00917

DIGEST: [Protest Against Contract Award]

Where qualified products list (QPL) clause in solicitation invites offers from nonlisted suppliers which need only qualify prior to time of award, fact that only protester's product was on QPL referenced in solicitation at issuance does not reasonably indicate that procurement is noncompetitive, despite solicitation's request for submission of cost or pricing data with proposals. Also, protester's representative was advised that another firm was seeking qualification approval. Solicitation did not have to be amended to reflect product approved for listing on QPL 2 days prior to closing date.

Varian Associates, Inc., Varian/Beverly (Varian), protests the award of a contract to Litton Systems, Inc. (Litton), under request for proposals (RFP) No. NO0104-79-R-0114, issued by the Navy Ships Parts Control Center (SPCC), Mechanicsburg, Pennsylvania, for 284 electron tubes used in AN/SPG 53 radar sets. -CNG00248

On April 6, 1979, the SPCC Purchase Division had received a request for the tubes. At that time, only Varian had QPL approval and there was no indication of any other sources which were in the process of qualifying. In accordance with Defense Acquisition Regulation (DAR) § 1-1109 (1976 ed.), the contracting officer informed the Naval Electronics Systems Command (NAVELEX) that inadequate competition had resulted from the current QPL and requested information on plans to expand the QPL or whether other means of qualification approval might be substituted to increase competition. NAVELEX advised SPCC that there -AGC00445

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were no plans to expand the QPL and that no means of quality assurance could be substituted for qualification approval. On April 27, 1979, a Litton representative informed SPCC that Litton was in the process of obtaining QPL approval for this particular electron tube from the Defense Electronics Systems Center (DESC), Dayton, Ohio, and that approval should be granted within 90 days. Litton requested that it be solicited on any acquisitions for these tubes. *Agc 01474*

The SPCC Contract Review Board approved the issuance of a competitive RFP to Varian and Litton pursuant to 10 U.S.C. § 2304(a)(2) (1976). The request for authority to negotiate stated "Negotiation will be effected by issuance of an RFP and will contain those clauses necessary to obtain cost or pricing data enabling the determination of price reasonableness by cost analysis, should adequate price competition not be realized." The RFP was issued on August 7, 1979, to Varian and Litton, with a closing date of August 22, 1979.

The procurement specification of the RFP states: "Electron Tube magnetron, type 8939 in strict accordance with Military Specification sheet MIL-E-1/1738A from the following QPL source FSCM (Federal Supply Code for Manufacturers) 88236." FSCM 88236 is the code for Varian/Beverly, the only firm on the QPL when the RFP was issued.

The solicitation also provided:

"B-3 NOTICE - QUALIFIED END PRODUCTS
(1969 DEC) (ASPR 1-1107.2(a))

"Awards for any end items which are required to be qualified products will be made only when such items have been tested and are qualified for inclusion in a Qualified Products List identified below (whether or not actually included in the List) at the time set for opening of bids, or the time of award in the case of negotiated contracts. Offeror should contact the office designated below to arrange to have the products which they intend to offer tested for qualification.

* * * * *

"Offerors offering products which have been tested and qualified, but which are not yet listed, are requested to submit evidence of such qualification with their bids or proposals, so that they may be given consideration. * * *

* * * * *

"Qualified Products List for this procurement is MIL-E-1/1738A.

"Manufacturers are urged to communicate with, and arrange to have the products that they propose to offer tested for qualification by the

NAVELEX
CODE 50432
WASHINGTON, D. C."

As stated in the request for authority to negotiate, the solicitation provided that offerors submit cost or pricing data with their priced offers.

By letter of August 20, 1979 (2 days prior to the closing date), DESC notified Litton that its product was granted qualification approval as a result of successful testing and would be listed on the QPL. Litton, the low offeror, was awarded the contract on September 19, 1979.

Varian protests the award on the grounds that before a contract was made to a source other than Varian and, in accordance with DAR § 3-505, an amendment should have been issued to the solicitation revising the procurement specification to permit procuring from sources other than Varian. In addition, that part of the RFP requiring the submission of cost or pricing data should have been deleted and the offerors permitted to submit proposals under competitive conditions. Varian emphasizes the alleged transformation of this procurement from noncompetitive (sole-source) to competitive without notice. Thus, Varian contends

it did not submit its offer on an equal basis with Litton because Litton knew the solicitation was competitive.

For the following reasons the protest is denied.

We agree with the Navy's position that Varian was or should have been aware of the competitive nature of the solicitation. The Qualified Products clause of the solicitation quoted, supra, was clear notice to Varian that the Navy was interested in having other manufacturers qualify and submit offers as suppliers of the Government's needs for these electron tubes. The reference to Varian alone in the specification was merely information that it was the only QPL-approved source on the date of the issuance of the solicitation. Further, there is nothing in the solicitation which mandates that award could be made only to Varian by a sole-source restriction or similar provision. On the contrary, although the Litton tube was not on the current QPL, it was an eligible offeror and awardee within the above QPL clause.

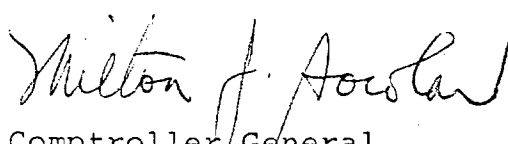
Although we acknowledge the requirement for submission of cost or pricing data with the offer might indicate the solicitation is sole-source (see B-170276, March 25, 1971), this fact alone does not override the clear language of the QPL clause to preclude the conclusion that the solicitation was competitive. As the Navy points out, the provision requesting cost or pricing data was incorporated at the outset to insure the submission of data if additional sources did not qualify. Also, the solicitation incorporated certain clauses by reference which required the data only for contract modifications.

We have held that when an apparent noncompetitive procurement (as where a specific firm's part number is identified by the solicitation and the firm is not aware that competitive offers are being considered) becomes competitive, procuring activities must amend the solicitation and provide the manufacturer of the specified part number an "opportunity to amend [its] proposals to reflect such changes as [it] might deem appropriate in light of the competitive nature of the procurement." 48 Comp. Gen. 605 (1969); B-176861, January 24, 1973. However, as noted above, the RFP

Qualified Products Clause reasonably indicated the opposite, i.e., that Varian could reasonably assume that a competitive offer might be considered. Not only did the RFP permit the consideration of other offers but the contracting officer states (and Varian did not deny) that, between issuance of the RFP and award, a Varian representative was advised on at least three occasions that an additional source was seeking qualification approval. In these circumstances, we do not believe the failure to amend the RFP was prejudicial.

Varian cites Rockwell International Corporation, 56 Comp. Gen. 905 (1977), 77-2 CPD 119, and Informatics, Inc., et al., 56 Comp. Gen. 389 (1977), 77-1 CPD 152, to support its position that the solicitation was sufficiently deficient to require correction and a chance to submit another offer. Both cases involved situations which do not exist in the instant case, that is, substantial changes in the Government's requirements which necessitated amending the RFP and further best and final offers. In the instant case no changes were made or necessary to indicate the competitive nature of the procurement.

Protest denied.


For The Comptroller General
of the United States