

DECISION



7-1665
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

118244

FILE: B-205371

DATE: April 26, 1982

MATTER OF: Edcliff Instruments

DIGEST:

1. Protest that awardee who was not listed as an "approved source" was ineligible for consideration is denied. RFP permitted offerors to qualify by submitting engineering data establishing that items offered were acceptable.
2. Where approved source solicitation permits agency to determine needs on case-by-case basis in qualifying substitute item, and where fraud or willful misconduct is not shown, GAO will not consider complaint by previously approved source that substitute item should not be purchased.
3. Contention that RFP should have included technical specifications defining when substitute items would be considered acceptable is rejected because protest not filed before closing date for receipt of initial proposals is untimely.

Edcliff Instruments protests the award of a contract to K.I.M. and Associates for 41 pump assemblies under request for proposals (RFP) No. F41608-81-R-1520 issued by the San Antonio Air Logistics Center (Air Force). The protester contends that the award was improper because the RFP limited competition to products manufactured by a previously approved source and because the tests on which the Air Force relied in approving K.I.M. were inadequate. Also, Edcliff says that, if proposals such as K.I.M.'s were to be considered, the RFP should have been amended to permit offerors to compete on a common basis. We deny the protest.

First, we point out that Edcliff's protest is founded on a mistaken interpretation of the RFP. Edcliff and Kollsman Instrument Corporation were listed in the RFP as approved sources. Edcliff contends that K.I.M. was not eligible for award under the RFP because K.I.M. was not a previously approved source for pump assemblies. According to Edcliff, K.I.M. should not have been considered unless it first qualified by showing either; (1) that it had previously produced the parts for the Government or the original equipment manufacturer (Kollsman) or (2) that K.I.M.'s pump assembly had undergone formal qualification testing to verify that the item met all environmental requirements established by Kollsman.

It is clear that the RFP did not limit award to pre-qualified firms. It identified the pump assemblies by Kollsman and Edcliff part numbers and provided that substitute parts manufactured by other sources would be considered if, time and resources permitting, the Government were able to determine that such parts were acceptable for Government use. Offerors were advised that they could qualify for award provided they submitted,

"prior to or concurrent with the proposal, such complete and current engineering data for the part(s) * * * as may be required for evaluation purposes * * *."

The Air Force reports that K.I.M. furnished sufficient information to permit the Government to determine that the K.I.M. pump assemblies were acceptable. Acceptance of the K.I.M. pump assemblies was facilitated because the Navy previously had conducted tests on two of them and because Air Force technical personnel were aware of these tests as a result of earlier efforts to develop alternate sources of supply. In fact, as the Air Force knew, Kollsman had previously been advised that the Government considered the K.I.M. assembly to be acceptable; the need to qualify K.I.M. for purposes of this procurement resulted because the Air Force inadvertently failed to list its part number in the RFP.

The procedure followed by the Air Force in this instance is recognized by the Defense Acquisition Regulation (DAR) § 1-313(c) (1976 ed.) and sanctioned by our Office as appropriate when the Government needs to assure that it receives satisfactory replacement parts but is not in a position, for lack of sufficient data, to write criteria describing them. B-176256, November 30, 1972; 52 Comp. Gen. 546, 548-549 (1973). In such circumstances, the acceptability of the part offered as a substitute must be determined on a case-by-case basis by assessing whether, in view of available data, there is adequate assurance that the equipment in which the part will be used will perform properly, taking the nature and function of that equipment into account. Olympic Fastening Systems, B-184929, October 18, 1976, 76-2 CPD 336; Rotair Industries; D. Moody & Co., Inc., 58 Comp. Gen. 149, 154-155 (1978), 78-2 CPD 410.

We recognize that Edcliff believes strongly that use of the K.I.M. pump assemblies will have undesirable side effects. It contends that their use will cause reduced equipment life resulting in burn-out of the motors used to drive the pumps, a problem which it believes will be aggravated by difficulties encountered in starting the pumps in cold temperatures. These circumstances were not adequately tested, Edcliff contends, because the Navy tests used a three-phase .25 hp. motor, not the single-phase .20 hp. motor which will be used to drive the pump in the Kollsman equipment in which it will be installed.

To the extent that Edcliff is inviting our Office to conclude that the K.I.M. pump assemblies will not work satisfactorily, we point out that, had the Air Force listed the K.I.M. pump assembly in the RFP, a protest objecting to K.I.M.'s inclusion would have been summarily denied. This is because the possibility that the K.I.M. pump assembly may not work is primarily a matter of practical concern to Air Force program personnel who would suffer any consequences which result if it proves to be unsatisfactory. It is not a matter of legal concern, because the effect of including K.I.M. is to broaden rather than limit competition.

Absent evidence of fraud or willful misconduct, such a contention does not raise an issue which is reviewable under our bid protest function. See Miltope Corporation--Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417, aff'd, Miltope Corporation--Reconsideration (Second), B-188342, July 1, 1977, 77-2 CPD 3; A & M Instrument, Inc., B-194554, September 4, 1979, 79-2 CPD 173.

Nor does the fact that K.I.M.'s assembly was inadvertently not listed make it necessary for our Office to decide whether the K.I.M. pump assembly is adequate. The RFP provided that the Air Force might purchase parts from a manufacturer who was not prequalified if it found that the parts were acceptable for Government use. The RFP does not define when a product will be considered acceptable; the DAR recognizes as we do that what is to be considered an acceptable part is to be determined by the procuring activity on a case-by-case basis. In view of the broad latitude reserved to the Air Force to define its needs in connection with such a determination, we will not question the Air Force's action in qualifying K.I.M. unless its decision was tantamount to fraud or willful misconduct.

In fact, the record shows that the Air Force was aware of and considered Edcliff's concerns in finding that the K.I.M. pump assembly was acceptable. Nevertheless, it believed that, due in part to changes by K.I.M., it would be possible to assure adequate start-up in cold temperatures. It also knew that whatever effect the use of K.I.M. assembly might have on motor life, it had been shown in the Navy's tests to significantly increase pump life, resolving a frequent maintenance problem of longstanding concern.

We conclude, therefore, that there is no basis for questioning the Air Force's decision.

Finally, Edcliff asserts that if the Air Force wanted to procure pump assemblies from other than prequalified sources it should have used a solicitation which included a technical specification which defined its minimum needs. Even if Edcliff were correct, however, and could show that the Air Force could have written satisfactory technical

specifications, the Air Force's failure to provide adequate specifications was a defect apparent on the face of the solicitation which cannot be protested after the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1981).

The protest is denied.

Milton J. Aroslaw
for Comptroller General
of the United States