

# DECISION



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

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FILE: B-210536

DATE: October 12, 1983

MATTER OF: Mercer Products & Manufacturing Co.,  
Inc.

## DIGEST:

1. Protest is denied because procurement for spare parts met all requirements for an acceptable, approved-source, restricted procurement--restriction met valid government need and nonapproved sources could submit proposals and could become qualified after evaluation of complete technical data package.
2. Even though protester had been erroneously awarded contracts for spare parts in the past without undergoing any qualification procedure and was ultimately determined to be qualified, contracting officer acted reasonably in rejecting protester, since protester offered alternative spare parts and protester's data package (required by solicitation) was insufficient for evaluation and qualification before award to original equipment manufacturer.

Mercer Products & Manufacturing Co., Inc. (Mercer), protests the refusal of the Defense Logistics Agency (DLA) to consider it an approved source for supplying spare parts described as "Chain, Bead, NSN 4010-00-583-5109, Lockheed-Georgia Co. (98897), P/N 375638-3" under request for quotations (RFQ) No. DLA500-82-U-0238.

We deny the protest.

The record shows that DLA initially solicited quotations from three potential offerors for a quantity of five bead chains; none of these potential offerors was the original equipment manufacturer. The names of the three firms solicited were generated by a computer from a master file which supposedly contains the names of firms which are qualified to supply the desired spare parts based upon past performance, ability to supply the parts in a timely manner,

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and willingness to participate in DLA's automated spare parts procurement program. According to DLA, when this automated procurement system was implemented in 1976, there was no real qualification procedure and, therefore, the computer file actually contains names of potential offerors which are not qualified to supply the parts in question as well as potential offerors which are qualified.

Mercer submitted the only quotation in response to the RFQ and offered to supply the five bead chains (Lockheed part No. 375638-3) at a price of \$42.10 each. Because Mercer was not the original equipment manufacturer nor an approved source for Lockheed-Georgia Co. part No. 375638-3, the contracting officer requested help from agency technical personnel to determine whether the alternative part offered by Mercer was equal to the Lockheed-Georgia Co. part specified in the RFQ. Even though Mercer's offer stated that it would supply parts which were the same as specified in the RFQ, it is not disputed that Mercer intended to supply alternative parts. The agency technician required a detailed drawing from Mercer in order to evaluate the Mercer part. Accordingly, the contracting officer called Mercer and requested a technical data package for evaluation purposes. The contracting officer also contacted the Directorate of Technical Operations and ascertained that the technical data package would have to be evaluated by the appropriate engineering support activity and that the Directorate of Technical Operations could not guarantee that an evaluation of Mercer's technical data package would be completed in less than 50 days. On September 10, 1982, the contracting officer forwarded Mercer's technical data package to the Directorate of Technical Operations for evaluation. Also, on September 10, because of the potential delay related to the technical evaluation of Mercer's proposed alternative parts, the contracting officer solicited a quotation from the original equipment manufacturer, Lockheed-Georgia Co.

On September 28, Lockheed-Georgia Co. offered to supply its bead chains at a price of \$13.56 per unit for a minimum purchase of eight units. The contracting officer notified Mercer (by letter of September 28) that due to the extended time necessary to review its drawings, Mercer would not be considered further for this procurement; the contracting officer indicated that evaluation would be completed "so as to determine acceptability for future acquisitions." On

October 13, the contracting officer awarded a contract to Lockheed-Georgia Co. for supplying eight bead chains by placing an order against a basic ordering agreement between Lockheed-Georgia Co. and the contracting agency.

Mercer contends that it had previously supplied these bead chains to DLA on several occasions and had never been advised by DLA or the user activities of any nonconforming parts that had been received. Therefore, Mercer believes it should have been considered to be a qualified offeror for this procurement without having to have its data package evaluated. As the only offeror which responded to the initial RFQ, Mercer concludes that it was entitled to award. Furthermore, Mercer argues that it was not allowed to compete on an equal basis with Lockheed-Georgia Co. because the award to Lockheed-Georgia Co. was based upon supply of eight bead chains rather than the five bead chains covered by the original solicitation and because both the delivery point and delivery schedule were changed between the time of the initial solicitation and award to Lockheed-Georgia Co.

DLA admits that Mercer had been awarded several contracts in past years for supply of these bead chains. DLA reports that Mercer had never had its data package for this part evaluated by the appropriate engineering support activity and, therefore, should not have been included in the master computer file as a qualified offeror. DLA contends that those awards made to Mercer in the past were erroneous in view of the fact that all offerors of alternative parts were to undergo a technical evaluation before they were considered qualified. DLA also points out that many of the offerors listed as qualified in DLA's computer file had never gone through any qualifying procedure and, therefore, not all firms listed as qualified were really qualified. DLA reports that it was encountering problems with parts supplied by firms which offered to supply the identical spare parts specified in an RFQ but which, in reality, supplied alternative spare parts. The primary problem encountered by DLA and the user agencies concerned spare part failures resulting in failure of the weapon systems or equipment in which the spare parts had been used and the possible injury to using military personnel or even loss of lives. A secondary problem concerns possible unfair

advantages accruing to spare part suppliers who obtain contracts by misrepresenting that they will supply the identical parts specified in an RFQ.

DLA also argues that the initial RFQ specifically required offerors of other than Lockheed-Georgia Co. part No. 375638-3 to submit a complete data package for evaluation purposes in order to be considered for award and that Mercer did not submit any technical data until the contracting officer requested that it do so on August 31. DLA contends that the drawing submitted by Mercer for technical evaluation in response to the contracting officer's request was inadequate because it did not show what material would be used in the manufacture of the bead chains. Mercer was advised by letter of October 2, 1982, that its technical data package was not considered complete and filed a protest with DLA by letter of October 5. DLA denied Mercer's protest on January 17, 1983. Subsequently, DLA advised Mercer of the deficiencies in its data package and Mercer sent them the latest revision of its drawing and a sample part for evaluation. Based upon this material, the engineering support activity determined on March 17 that Mercer's product was equal to Lockheed-Georgia Co.'s part and that Mercer was a qualified offeror for this part. However, Lockheed-Georgia Co. had delivered all eight bead chains on February 2. Therefore, DLA points out that while Mercer could not compete for the subject procurement, Mercer will be considered for all future procurements for this part. DLA contends that the above events show "the dogged pursuit of item breakouts" by the contracting activity and the efforts made to "break" the sole-source chain. Because of its efforts, DLA states that all future procurements for these bead chains will be on a competitive basis.

The Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.) permits the procurement of spare parts on a restricted basis in appropriate circumstances. However, the validity of any procedure which limits the extent of competition depends upon whether the restriction serves a bona fide need of the government. Such restrictions include those essential to assure procurement of a satisfactory end product or to determine the high level of quality and reliability assurance necessitated by the criticality of the product. Department of Agriculture's Use of Master Agreement, 54 Comp. Gen. 606, 609 (1975), 75-1 CPD 40. Basic characteristics of approved, although restrictive, procedures are that

they function so that (1) no firm which is able to provide a satisfactory product is necessarily precluded from competing on procurements of that item; and (2) a firm may become eligible to compete at any time it demonstrates under suitable procedures that it is able to furnish an acceptable item which meets the government's needs. Department of Agriculture's Use of Master Agreement, supra, at 609.

Thus, while DAR § 1-313(c) allows a procuring activity to solicit only approved suppliers, it does not preclude the submission and consideration of proposals from unapproved sources which can otherwise qualify their products under suitable testing procedures. See Metal Art, Inc., B-192579, April 3, 1979, 79-1 CPD 229. Moreover, our Office has consistently taken the position that agencies must give alternate producers an opportunity to qualify when procuring replacement parts pursuant to DAR § 1-313(c). See Parker Hannifin Corporation, B-199937, October 2, 1981, 81-2 CPD 270.

We find no basis for sustaining Mercer's protest. Even though Mercer had been solicited for and awarded contracts in the past, the fact remains that neither DLA nor the appropriate engineering support activity had ever fully evaluated Mercer's data package and bead chain. According to DLA, awards which had been made to Mercer for this part were made by mistake because the master computer file for DLA's automated spare parts procurement program contained names of firms which had never undergone any data evaluation, product testing, or other qualification procedure. Moreover, in view of the fact that DLA procures spare parts for various weapons systems and spare part failures can lead to injury or even death to military personnel who use the equipment, we are not prepared to say that the requirement for qualification of offerors is improper since safety in the use of such equipment is a bona fide government need. See Hill Industries, B-210093, July 6, 1983, 83-2 CPD 59.

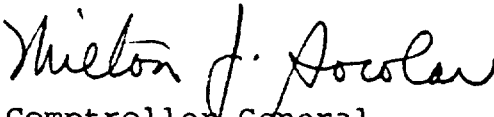
The RFQ put Mercer and other potential offerors of alternative parts on notice that complete evaluation data would be required in order to be considered for award. Mercer did not submit its drawing until such information was specifically requested by the contracting officer and, even then, the data package did not include reference to the type of material to be used in the manufacture of the bead

chains. The judgment of the technical personnel of the procuring agency as to the technical adequacy of Mercer's offer will not be questioned by our Office absent a clear showing of unreasonableness. See Interad, Ltd., B-210013, May 10, 1983, 83-1 CPD 497. The contracting officer was invested with a reasonable amount of discretion in the evaluation of Mercer's offer. Interad, Ltd., supra. In view of the fact that Mercer did not submit its sample bead chain until after the contract had been awarded to Georgia-Pacific Co. and because, without the sample, the engineering support activity could not determine that Mercer's offer of alternative parts was conforming to the RFQ's requirements, we cannot find that the contracting officer acted unreasonably or abused his discretion in rejecting Mercer's offer and awarding to the original equipment manufacturer. Notwithstanding the fact that Mercer had been awarded contracts in the past without an evaluation of its parts, because Mercer's data package was not complete by the time of award, it is our view that Mercer has not provided sufficient evidence to show that the agency's conclusions that the data initially submitted was insufficient and, based upon information available to the contracting officer at the time of award, that Mercer should not receive the award were unreasonable. See Compressor Engineering Corporation, B-206879, October 29, 1982, 82-2 CPD 383; Allied Sales & Engineering, Inc., B-203913, B-204102, January 8, 1982, 82-1 CPD 23.

We find that DLA has met all of the requirements for an acceptable, restricted procurement. The primary reason for restricting the procurement--safety of military personnel--is a valid government need. Additionally, DLA solicited an offer from Mercer and attempted to have Mercer qualify before award was made to any other firm. Finally, DLA advises us that Mercer ultimately was qualified and will be considered for future procurements. See, for example, Hill Industries, supra.

In view of our conclusion that Mercer was properly rejected, we need not consider Mercer's allegations that the terms of Georgia-Pacific Co.'s contract differ from the terms under which Mercer was solicited.

The protest is denied.

for   
Comptroller General  
of the United States