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**DECISION**



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

**FILE:** B-215189; B-215277; **DATE:** January 18, 1985  
B-215804  
**MATTER OF:** Pacific Sky Supply, Incorporated

**DIGEST:**

1. When record indicates that a protester has had difficulty in obtaining information as to whether, when, and at what price awards have been made, GAO will consider protests that, so far as can be determined from the record, were filed within 10 days of the protester's notice that its offers had been rejected or that orders had been placed with other sources.
2. When spare parts are critical to the safe and effective operation of aircraft propellers, with tolerances measured in ten thousandths of an inch, Defense Acquisition Regulation § 1-313, which states that parts generally should be procured only from sources that have satisfactorily manufactured or furnished them in the past, is applicable.
3. Blanket offer to meet all specifications is not legally sufficient to make a nonresponsive bid or offer responsive, and it is not enough that the bidder or offeror believes that its product meets specifications. GAO therefore will deny a protest against rejection of an offer from an unqualified source when the protester has not supplied evidence such as test reports that it can meet extremely precise specifications and has not demonstrated the existence of quality assurance procedures.
4. When protester's price is not the lowest offered, a protest against award to any other firm at a higher price is without legal merit.

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B-215189; B-215277; B-215804

5. Agency's determination that it is unable to evaluate an offer because of lack of technical information and test data need not be referred to Small Business Administration, since in rejecting the offer, the agency has not reached the question of the offeror's responsibility.

This decision responds to multiple protests by Pacific Sky Supply, Incorporated, a small business whose unsolicited offers for spare parts for the C-130 aircraft have repeatedly been rejected by the Air Force because the firm is not a prime equipment manufacturer and has not otherwise been approved as a source for the parts in question.

We deny the protests, but note that under legislation enacted by the 98th Congress, Pacific Sky in the future may have a greater opportunity to become an approved source than it has for the protested procurements.

Basis of Protest:

The majority of Pacific Sky's protests are against the issuance of purchase requests under basic ordering agreements negotiated by Warner Robins Air Logistics Center, Robins Air Force Base, Georgia.<sup>1/</sup> The firm

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<sup>1/</sup> Specifically, Pacific Sky's protests concern the following purchase requests (in the order in which they were issued): FD2060-83-32293; FD2060-84-58391; FD2060-84-58494; FD2060-84-58656; FD2060-84-59527; FD2060-59528; N00383-83-MPZ-3838 (issued by Warner Robins under a basic agreement negotiated by the Navy's Aviation Supply Office); FD2060-84-59906; FD2060-84-59912 (issued under invitation for bids No. F09603-84-B-0261, a 100 percent small business set-aside); and FD2060-84-60919.

Pacific Sky filed, but subsequently withdrew, similar protests against procurements by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas. See B-215758, B-217018, and B-217031, all closed without action by our Office.

B-215189; B-215277; B-215804

consistently contends that it could supply spare parts meeting Air Force specifications at prices lower than those of the approved source.

According to the Air Force, data sufficient for competitive procurement is not available, and acquisition of such data would not be economical. It therefore has procured the spare parts using a restricted procurement method code. In virtually every case, the solicitation and Commerce Business Daily synopsis have advised offerors that to be considered for award, they must (1) be an approved source; (2) submit evidence of having satisfactorily supplied the required part directly to the government or to the prime equipment manufacturer; or (3) submit other documentation that would allow the Air Force to determine that the part being offered is technically suitable for use with the C-130.

Timeliness:

The Air Force argues that, to the extent Pacific Sky challenges this requirement as unduly restrictive, the protests are untimely under our Bid Protest Procedures. These require protests against alleged improprieties that are apparent on the face of a solicitation to be filed by bid opening or the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1984). With only two exceptions, the protested solicitations closed on or before March 30, 1984, but Pacific Sky did not protest to our Office until May 10, 1984.<sup>2/</sup>

We find, however, that the protests are not against the approved source requirement per se, but against the Air

<sup>2/</sup> In some cases, in submitting its unsolicited offers, Pacific Sky advised the Air Force that it protested any award at a price lower than its own. The agency did not regard these as valid protests. Neither do we. See Precision Dynamics Corp., B-207823, July 9, 1982, 82-2 CPD ¶ 35, stating that a protest alleging a defect apparent on the face of a solicitation, filed with a bid or included in a proposal, is not a timely protest to the contracting agency.

B-215189; B-215277; B-215804

Force's rejection of Pacific Sky's unsolicited offers as nonresponsive. Pacific Sky states that it had difficulty in obtaining information as to whether, when, and at what price awards had been made. We therefore will consider those protests that, so far as we can determine from the record, were filed with our Office within 10 days of Pacific Sky's notice that its offers had been rejected or that orders had been placed with approved sources. See 4 C.F.R. § 21.2(b)(2).

Rejection of Pacific Sky's Offers:

The first timely protest concerns purchase request No. FD2060-84-58656, which was issued on December 23, 1983, closed on January 27, 1984, and awarded to Hamilton Standard Division of United Technologies on April 19, 1984. Pacific Sky states that it was not advised of the award price until May 7, 1984, a fact the Air Force does not dispute. Under this purchase request, the Air Force sought prices for 294 cams to be used in the C-130 propeller. Pacific Sky offered to supply the cams at a unit price of \$36.50, compared with Hamilton Standard's \$45.36.

In its protest, Pacific Sky states that in September 1983, in response to solicitation No. FD2060-83-31684, it had quoted the same price for 288 of the same cams. In connection with that procurement, the Air Force asked Pacific Sky to submit a sample, as well as engineering drawings and specifications. Since these apparently are still being evaluated, and since no award has been made under the September solicitation, Pacific Sky objects to rejection of its later offer.

The Air Force, however, states that the request for the sample and other information was an error on the part of inexperienced contracting personnel, who did not consider whether the Air Force would be able to evaluate it. According to the Air Force, the drawings, which Pacific Sky certifies that it obtained legally, are (1) outdated and (2) do not contain test procedures. Since the Air Force has not independently developed such procedures, it cannot test the cams or ensure that they meet tolerances measured in ten thousandths of an inch. The Air Force therefore argues that its rejection of Pacific Sky's offer for the cams was reasonable and proper.

The Air Force raises the same objection, i.e., insufficient data to evaluate the spare parts, to all of Pacific Sky's unsolicited offers. In addition, it states that its discussions with Pacific Sky reveal that the firm has no production capability and subcontracts to different, unidentified vendors. According to the Air Force, even qualification of a particular subcontractor would not be an adequate safeguard unless Pacific Sky agreed to use only that subcontractor. Further, the Air Force states, Pacific Sky deals in surplus parts, which may not be acceptable.

GAO Analysis:

In all of Pacific Sky's protests, the primary issue is whether the Air Force's requirements for an approved source are consistent with statutory and regulatory requirements for maximum practicable competition. Given the critical nature of the parts in question, we find the Air Force's requirements, and resulting rejection of Pacific Sky's unsolicited offers, reasonable and in accord with the Defense Acquisition Regulation (DAR), § 1-313, reprinted in 32 C.F.R. pts. 1-39 (1984).

The purpose of this regulation is to ensure "safe, dependable, and effective operation of equipment," as well as the "requisite reliability and changeability of parts." It therefore permits their procurement on a restricted basis when fully adequate data, test results, and quality assurance procedures are not available or when the government lacks the right to use them for procurement purposes. In such cases, DAR, § 1-313(c) states, the parts generally should be procured only from sources that have satisfactorily manufactured or furnished them in the past. The regulation concludes:

"The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of apparently identical parts from new sources, since the functioning of the whole may depend upon latent characteristics of each part which are not definitely known. . . ."

B-215189; B-215277; B-215804

The same language appears in the Department of Defense Supplement to the Federal Acquisition Regulation, § 17.7203 (1984).

In our opinion, the critical tolerances and the essential function of parts for the C-130 propeller clearly bring the procurements protested by Pacific Sky within the scope of DAR, § 1-313. For example, the record reveals that one of the cams being procured under purchase request FD2060-84-58656, part no. 546446, controls the pitch of the propeller blades and protects the propeller against overspeed and negative torque on the engine during flight. This cam, according to Hamilton Standard, the prime manufacturer, is therefore critical to the safe operation of the 54H60 propeller on the C-130 aircraft. Pacific Sky has not previously supplied the part either directly to the Air Force or to Hamilton Standard.

Other than a blanket offer to meet all specifications, which is not legally sufficient, cf. Zero Manufacturing Co., B-210123.2, Apr. 15, 1983, 83-1 CPD ¶ 416 (blanket statement that bidder will comply with all material specifications does not make an otherwise nonresponsive bid responsive); Sutron Corp., B-205082, Jan. 29, 1982, 82-1 CPD ¶ 69 (in brand name or equal procurement, bidder must demonstrate that product meets all salient characteristics, and it is not enough that the bidder believes its product is equal or makes a blanket statement to this effect), Pacific Sky has provided our Office with no evidence that it can manufacture the parts in question to the extremely precise dimensions required. For example, it has not provided us with copies of reports from the FAA-approved repair station that it offered to have perform functional tests on the spare parts. Nor has Pacific Sky demonstrated the existence of quality control procedures or offered any assurances that it will use only qualified subcontractors and will supply only newly-manufactured parts. Pacific Sky's protests against awards at prices higher than its own are therefore denied. See Compressor Engineering Corp., B-213032, Feb. 13, 1984, 84-1 CPD ¶ 180.

In two instances, Pacific Sky's protests are without merit because its price was not the lowest offered. In response to purchase request FD1060-84-59906, covering 2030 retaining rings, part no. 584086, California Propeller, an approved source and the proposed awardee, quoted unit and extended prices of \$9.70 and \$19,700.70, respectively, while Pacific Sky quoted \$10.25 and \$20,817.75. Under

invitation for bids F09603-84-B-0261, which called for two first articles and 524 production units of a control drive sleeve, part no. 514826, Skyspares Parts, Inc. was the low bidder at \$125 for each of the first articles and \$24.15 for each of the production units. Pacific Sky bid \$49.20 each without quoting a price for the first articles.

Additional Bases of Protest:

In addition to its protests on the basis of price differentials, Pacific Sky contends that the Air Force should have referred its determination that the offers were nonresponsive to the Small Business Administration.

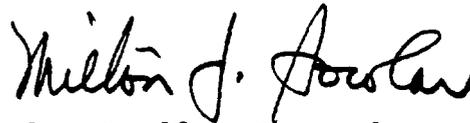
Responsiveness is a term generally associated with formally advertised procurements; it is occasionally used in connection with negotiated procurements (which in most cases these were) to denote a material requirement. Center for Employment Training, B-203555, Mar. 17, 1982, 82-1 CPD ¶ 252. Responsiveness refers to the bidder's or offeror's unconditional agreement to supply precisely what is called for in a solicitation. Responsibility, on the other hand, refers to the bidder's or offeror's ability to do so; it includes financial status, experience, and the like. See Raymond Engineering, Inc., B-211046, July 12, 1983, 83-2 CPD ¶ 83.

The Small Business Act, as amended, 15 U.S.C. § 637(b)(7)(A) (1982), requires a contracting officer's finding that a small business is not responsible to be referred to the SBA, which will conclusively resolve the matter by issuing or refusing to issue a certificate of competency. Skyline Credit Corp., B-209193, Mar. 15, 1983, 83-1 CPD ¶ 257. When a contracting officer makes a finding of nonresponsiveness, however, or determines that an offer is technically unacceptable, the Act does not apply. See Rogar Manufacturing Corp., B-214110, Apr. 25, 1984, 84-1 CPD ¶ 479 (referral is not required when a bid is properly rejected as nonresponsive); Advanced Electromagnetics, Inc., B-208271, Apr. 5, 1983, 83-1 CPD ¶ 360 (a finding of technical unacceptability need not be referred to SBA). Similarly, the Air Force's determination that it was unable to evaluate Pacific Sky's offers because of lack of information was not required to be referred to SBA, since the Air Force never reached the question of the firm's responsibility.

Finally, Pacific Sky complains of the Air Force's failure to notify it of the awards or to advise it of the reasons why it had not been accepted, as required by DAR, § 2-408.1. As we have often stated, failure to notify an unsuccessful bidder is a procedural deficiency that does not affect the validity of an otherwise proper award. Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233. We note that the record is replete with correspondence between the Air Force and Pacific Sky concerning the additional information that the agency believed should have been supplied in order for it to proceed with qualification of Pacific Sky. The protest on these bases therefore is also denied.

Conclusion:

Pacific Sky's protests are denied.<sup>3/</sup>



For the Comptroller General  
of the United States

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<sup>3/</sup> As noted, Pacific Sky may have a greater opportunity to compete in the future under legislation enacted by the 98th Congress: the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, § 202, \_\_\_ Stat. \_\_\_ (1984), and the Department of Defense Authorization Act, 1985, Pub. L. No. 98-525, § 1216, \_\_\_ Stat. \_\_\_ (1984). Both contain provisions concerning prequalification, testing, and other quality assurance procedures and require, among other things, that qualification be justified and standards specified; that potential offerors be provided an opportunity to demonstrate their ability to meet standards; and that agencies promptly advise offerors whether qualification was attained and, if not, why not. Potential offerors generally may not be denied the opportunity to submit offers and have them considered for award solely because they are not on lists of qualified bidders or manufacturers. Moreover, the Department of Defense Authorization Act states that the opportunity to qualify shall be "on a reimbursable basis," and both Acts state that in certain circumstances, the contracting agency must bear the cost of testing and evaluation for small business concerns.