

DECISION



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

FILE: B-215841

DATE: March 11, 1985

MATTER OF: Electro-Methods, Inc.

DIGEST:

1. When spare parts are critical to the safe and effective operation of an aircraft engine and the specifications call for precise tooling and machining, the regulations which state that such parts generally should be procured only from sources that have satisfactorily manufactured or furnished them in the past are applicable. Thus, an agency may reject as technically unacceptable an offer which does not demonstrate that the offeror qualifies as an approved source for the part and the offeror admits its experience is limited to the manufacture of similar parts.
2. Agency's rejection of a small business offer as technically unacceptable need not be referred to the Small Business Administration, since, in rejecting the offer, the agency has not reached the question of the offeror's responsibility.
3. Protest against requirement that a firm offering engine spare part be approved by the engine manufacturer because the manufacturer refuses to do business with the spare parts firm relates to a dispute between private parties which GAO will not consider under its protest function.

Electro-Methods, Inc. (EMI), a small business, protests the procuring activity's refusal to approve EMI as an alternate source for part number 4041374, an air seal for the F14 engine manufactured by Pratt & Whitney (Pratt), under request for proposals (RFP) No. F41608-84-R-7400, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas (Air Force).

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We deny the protest in part and dismiss it in part.

The Air Force published a notice of the requirement in the Commerce Business Daily (CBD). The CBD notice listed three approved sources for the part in addition to Pratt. EMI submitted an unsolicited offer in response to the RFP. By separate letter, EMI requested that it be qualified as an alternate approved source for the part primarily on the grounds that it had manufactured similar parts for the Air Force, Oklahoma City Air Logistics Center. EMI submitted a data package with its approval request. The Air Force determined that similarity of the part manufactured by EMI to the one solicited was not acceptable evidence of EMI's capability to produce the part under this solicitation. The Air Force stated that the air seal had critical life characteristic requirements, that is, features which must be manufactured to precise standards in a precise way to provide a part acceptable for use in the Pratt engine. The Air Force stated that, as a technically restricted part, the item could be procured only from sources that have qualified their parts in the engine in which the part is to be used.

EMI contends that the Air Force determination that EMI does not qualify as an approved source lacked a reasonable basis. In addition, EMI contends that the Air Force rejection of EMI's offer constituted a negative responsibility determination which should have been referred to the Small Business Administration (SBA) under the SBA's certificate of competency (COC) procedures. Finally, EMI states that the Air Force in its letter rejecting EMI's offer improperly is requiring EMI to obtain source approval from Pratt. EMI asserts that this requirement is unduly restrictive of competition since Pratt refuses to work with EMI and the Air Force has the data necessary to determine if EMI can manufacture the part.

The air seal procurement is being conducted under a restricted method code based on the Air Force determination that there is insufficient data to permit a formally advertised competitive procurement. The solicitation 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 such as engineering data and quality assurance procedures that would allow the Air Force to determine the acceptability of the part offered.

We have held that, where a spare part is critical to the operation of aircraft, regulations requiring acquisition from an approved source, see the Defense Acquisition Regulation (DAR), § 1-313, reprinted in 32 C.F.R. pts. 1-39 (1984), and Department of Defense Supplement to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 217.7203 (1984), are applicable. Pacific Sky Supply, Inc., B-215189 et al., Jan. 18, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 53.

The purpose of the regulation is to ensure "safe, dependable, and effective operation of equipment," as well as the "requisite reliability and changeability of parts." It therefore permits component part procurements 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 such information for procurement purposes. In such cases, DAR, § 1-313(c) and 48 C.F.R. § 217.7203 state, the parts generally should be procured only from sources that have satisfactorily manufactured or furnished them in the past. Each 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 even 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."

Here, the Air Force has determined that the air seal is a technically restricted part under the regulations, and thus the procuring of this part is limited to sources that have qualified their parts in the engine in which the part is to be used. In this connection, the Air Force states that the seal is "very critical and has numerous critical life characteristics (CLC)" which are features that must be manufactured properly since these CLCs affect the life of the part and ultimately the safe operation of the engine. EMI submitted evidence to the Air Force and to this Office which it believes was sufficient to show its product's acceptability and which specifically acknowledged the need to meet the CLC quality assurance requirements established by Pratt. However, EMI also concedes that it has not

manufactured the solicited part previously or met the required quality assurance requirements. Here, the Air Force made a technical determination that the product must be tested for use in the engine for which it is made and that neither the data submitted by EMI nor the fact that EMI had made similar items was sufficient to qualify EMI as an approved source. Accordingly, in our view, the Air Force rejection of EMI's offer was reasonable.

EMI contends that the Air Force should have referred its determination that EMI was not a qualified source to the SBA. 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 COC. Skyline Credit Corp., B-209193, Mar. 15, 1983, 83-1 C.P.D. ¶ 257.

In Pacific Sky Supply, Inc., *supra*, in similar circumstances, we concluded that, when a contracting officer determines that an offer is technically unacceptable, the question of responsibility is not involved and therefore the Act does not apply. See Rogar Manufacturing Corp., B-214110, Apr. 25, 1984, 84-1 C.P.D. ¶ 479 (referral is not required when a bid is properly rejected as nonresponsive); Advanced Electromagnetics, Inc., B-208271, Apr. 5, 1983, 83-1 C.P.D. ¶ 360 (a finding of technical unacceptability need not be referred to SBA). Accordingly, the Air Force's determination here that EMI could not be approved as an alternate source was not required to be referred to SBA, since the Air Force never reached the question of the firm's responsibility.

Finally, EMI argues that it is "impossible" to obtain source approval from Pratt and thus the Air Force's procedure requiring such approval is unduly restrictive of competition. According to EMI, Pratt refuses to do business with EMI and will only approve sources with which it has a subcontractor relationship. Currently, EMI is involved in litigation to obtain certain Pratt spare part technical data from the Navy. Pratt is a codefendant with the Navy.

As noted previously, we have found legally unobjectionable the restrictive method of acquisition procedure followed here which provides, among other things, that, where the Air Force does not have data sufficient to approve a source, the offeror must make arrangements for qualification

with the original engine manufacturer. We view EMI's particular problem, its inability to obtain Pratt's approval due to its inability to develop a business relationship with Pratt, as a matter between private parties which cannot be adjudicated by this Office. See C3, Inc., B-211900, Dec. 30, 1983, 84-1 C.P.D. ¶ 44, where we held that a protest that the brand name manufacturer of computer equipment specified in the solicitation created a sole-source procurement by refusing to furnish such equipment to the protester related to a matter which we would not consider under our protest function. We do note in this connection that, although EMI has been unable to reach an understanding with Pratt, Pratt has approved three sources and competition was obtained under this procurement.

The protest is denied in part and dismissed in part.

Harry R. Van Cleve
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General Counsel