FITZMAURICE
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DECISION

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

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FILE: B-218430 **DATE:** April 26, 1985

MATTER OF: JGB Enterprises, Inc.

DIGEST:

1. GAO dismisses protest where the protester offered an alternate product in lieu of the approved source item specified in the solicitation and, as a result, was not considered for the award because the alternate could not be analyzed and approved in time. The solicitation notified all offerors that the length of time needed to approve an alternate product could prevent consideration for the current contract award. In view of this notification, the protestor has no grounds to complain that its proposal was not considered, since it voluntarily chose to offer an alternate product.

2. Fact that an agency's procedure for approving alternate products takes more time than protester believes is necessary does not indicate that the procedure lacks a reasonable basis.

JGB Enterprises, Inc. protests the award of a contract to Aeroquip Corporation under request for proposals (RFP) No. DLA700-85-R-0124, issued by the Defense Construction Supply Center, Defense Logistics Agency, Columbus, Ohio. In JGB's opinion, DLA should have accepted the alternate product it offered, since the product met the same military specification and quality assurance provisions as the approved source item offered by Aeroquip.

We dismiss the protest.

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The RFP solicited 295 feet of nonmetallic hose identified by Aeroquip part No. 2758-80.[1] Offerors were referred to Clause L30 of the RFP, entitled "Products Offered," for an explanation of this specification. Subsection (a) of Clause L30 stated:

> "The product described by the manufacturer's name and part number in the procurement identification description (PID) of this solicitation is that product which the Government has determined to be acceptable. Neither detailed specifications nor other data may be available for use in evaluating the technical acceptability of other products. Accordingly, all offerors must indicate below whether they are offering the exact product or alternate product and furnish the data required for whichever is applicable. Exact product means the identical product cited in the PID manufactured by the manufacturer cited in the PID or manufactured by a firm who manufactures the product for the manufacturer cited in the PID. Any product not meeting this criteria is considered an alternate product even though it may be manufactured in accordance with the drawings and/or specifications of the manufacturer cited in the PID. . . ." (Emphasis original.)

If an offeror planned to supply an alternate product, Subsection (f) warned:

> "Failure to furnish complete data and information required to sufficiently establish

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[1] According to the protester, this is a 5-inch synthetic hose used for carrying petroleum-based products, particularly fuel and lube oils, and salt and fresh water.

> acceptability of the product offered may preclude consideration of the offer. In addition, offerors are hereby advised that the Government will make every reasonable effort to determine, prior to award, the acceptability of any products offered which are within the range of consideration. However, if such determination cannot be accomplished by the expected contract award date, the products may be considered technically unacceptable for this award. The offeror will be advised accordingly. . . ."

JGB stated in its offer that it intended to supply hose manufactured by Durodyne, Inc. According to JGB, this hose meets the same military specification (MIL-H-24595) and quality assurance requirements as Aeroquip's. Based on its belief that the Durodyne hose was equivalent to the Aeroquip product, JGB checked the solicitation box that indicated that it was offering the "exact product" called for by the RFP.

DLA, however, concluded that JGB was in fact offering an "alternate product," and, as a result, notified JGB that the Durodyne hose should be forwarded to the Naval Sea Systems Command (DLA's client for this procurement) so that the Navy could evaluate it and decide whether the product was acceptable. DLA further informed JGB that since considerable time would be required for the Navy to evaluate the Durodyne hose, JGB's offer could not be considered for the protested award, but that if, after testing, the Navy approved the item, it would be listed as an approved source for future procurements.

JGB argues that the Durodyne hose can fully satisfy the government's needs and that the practical effect of the RFP's item description, when coupled with Clause L30, is to restrict the procurement to only the Aeroquip product. JGB further notes that DLA waited 3 months after the closing date for receipt of proposals before it informed the company that its product needed Navy approval. The protester states that it cannot understand why DLA allowed so much time to elapse before it referred the matter to the Navy. According to JGB, it took the company only 2 days

over the telephone to find out from the Navy that the Durodyne hose would have been acceptable. The protester also points out that by purchasing the hose from Aeroquip rather than from JGB, the government will spend an additional $5,097 for no additional benefit.

Based on the foregoing, JGB requests that our Office recommend that (1) DLA terminate the Aeroquip contract and make award to JGB, and (2) that DLA also be required to reimburse JGB for proposal preparation and the costs incurred while pursuing this protest.

Our Office has recognized that, in appropriate circumstances, the procurement of items on a source-controlled basis is permitted. See, for example, VSI Corp., Aerospace Group, B-204959, July 30, 1982, 82-2 CPD ¶ 94. However, we have also held that the authority to solicit from an approved source does not preclude the submission and consideration of proposals from unapproved sources that can otherwise qualify their products under suitable testing procedures. Hill Industries, B-210093, July 6, 1983, 83-2 CPD ¶ 59.

Under this solicitation, DLA informed offerors that Aeroquip's hose met its needs and was considered an approved source. Nevertheless, in Clause L30, DLA further informed offerors that it was willing to consider procuring other types of hose--provided that the agency could determine their suitability before award. Thus, the solicitation did not prohibit JGB from offering a Durodyne hose, but it did put the company on notice that any substitute for the named brand hose would have to be tested and approved before it could be accepted and that, if this process took too long, an alternate proposal would not be considered. This is in fact what happened to JGB.

In view of the above, we do not find that the RFP's item description and Clause L30 improperly restricted competition. Rather, they provided for a process that we have recognized in prior decisions: an alternate product may be offered in lieu of one from the named source, but acceptance of that alternate product is subject to agency analysis and approval. The RFP notified all offerors of this fact, as well as of the fact that the approval process could prevent an alternate product from being considered for the current award.

JGB either misunderstood Clause L30 or failed to read it closely enough--the Durodyne hose was simply not an approved source. JGB may be correct in stating that it is equivalent to the Aeroquip product, but it clearly is not the "exact product" as defined by the RFP; it therefore was subject to the approval process mentioned in Clause L30. JGB voluntarily offered an alternate product with at least constructive if not actual notice of what that entails. It therefore cannot complain at this stage because that product must first be approved before the procuring agency will accept it.

JGB also implies that the approval process takes too long, since JGB was able to contact the Navy by telephone and quickly learn that the Durodyne hose was acceptable.

DLA advises us that the contracting officer, upon evaluating the JGB proposal and realizing that the protester was offering an alternate product, referred the proposal to an in-house technical division for that group's analysis of whether Durodyne hose could be accepted in lieu of the Aeroquip product. The technical division, however, concluded that the proposal contained insufficient data to establish the acceptability of the Durodyne hose. It therefore recommended to the contracting officer that the question of the hose's acceptability be referred to the Navy for that agency's analysis. (According to DLA, the Navy's approval process normally takes 60 to 90 days to complete.) It was after receiving this recommendation that the contracting officer informed JGB that it was necessary for the Navy to approve the firm's proposed alternate product and that it would therefore be impossible to consider the JGB proposal for the current award.

We have held that contracting agencies have considerable discretion in the establishment of testing procedures and that, in the absence of a showing that the agency's actions lack a reasonable basis, we will not substitute our judgment for that of the agency's. T.G.L. Rubber Co., Ltd., B-206923, Sept. 20, 1982, 82-2 CPD ¶ 239. Although in this case JGB obviously does not agree with the length of time the source approval procedure takes, it has not made any showing that the agency's procedure lacks a reasonable basis.

JGB has not stated a valid basis for protest. Therefore, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), the protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel