The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ingersoll-Rand Company

File: B-224706; B-224849

Date: December 22, 1986

DIGEST

1. Protester's contention that the product tests it was required to conduct with respect to an earlier procurement should be required of all offerors on current solicitations is denied, because present solicitations contain no such testing requirements and proposals must be evaluated only on the basis of factors specified in the solicitations.

2. As the objective of the General Accounting Office's (GAO) bid protest function is insure full and open competition for government contracts, GAO will not review a protest the purpose of which is to further restrict competition.

3. Protester's contention that it was not treated equally, since as the incumbent contractor it was not able to offer an alternative product, is denied because there was nothing in the solicitation to prohibit protester from offering an alternative product.

4. Protest of agency's failure to discuss protester's proposal prices and standings is denied since discussions are not required when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience that acceptance of the most favorable initial proposal would result in the lowest overall cost to the government at fair and reasonable prices, where the RFP advised offerors of this possibility and discussions were in fact not held.

5. Protest that contracting officer should have informed the protester (which previously had been a sole source contractor with respect to supplying the items being procured) that the present protested solicitations were being conducted on a competitive basis is denied, since the solicitations were requests for proposals rather than the requests for quotations used in the past and the RFPs clearly indicated that alternative products would be considered. Moreover, the

037715

protester is experienced with government contracts and protests and should have known of the likelihood of competition in view of the agency's responsibility to encourage new competitors where only limited sources have been available in the past.

DECISION

Ingersoll-Rand Company (Rand) protests contract awards to Compressor Engineering Corporation (CECO) by the Defense Logistics Agency (DLA) under requests for proposals (RFP) Nos. DLA700-85-R-2772 and DLA700-86-R-1283. The first procurement was for plate and spring sets and the second was for valve assemblies. Both items are to be used on oil free compressors for which Rand was the original manufacturer. Rand contends that it was improper, arbitrary and capricious for DLA to test these critical items from CECO for only 500 hours when Rand had been required previously to conduct 2,000 hours of acceptance testing for the compressor parts at its own expense. Rand further contends that the contracting officer acted improperly in not including the cost of testing the alternative products in her evaluations, in failing to discuss Rand's proposals and status prior to award, and in failing to notify Rand that these were competitive procurements.

These protests are denied in part and dismissed in part.

The RFPs identified the required items with Rand part numbers but each RFP clearly indicated that alternative products would be considered. The "Products Offered" clauses contained a subsection entitled "Alternative Product" describing what information must accompany an offer of an alternative product to enable DLA to determine if the alternative product was equal to the specified Rand product. CECO offered an alternative product under each RFP and in each case its unit price was below that of Rand. DLA sent samples of CECO's products to the Naval Sea Systems Command (NAVSEA) for evaluations. NAVSEA conducted dimensional verifications, material analyses, and 500-hour performance tests of the parts in the Rand compressor before determining that CECO's alternative products were technically acceptable. The RFPs specified no testing requirement other than those contained in the quality assurance provisions for the contractors' end-item inspection systems. As CECO was found to be responsible and its prices were low, the contracts were awarded to CECO. In each instance, Rand protested to DLA and DLA denied each protest. Rand then protested to this Office.

Rand's main contention is that all offerors were not treated equally since only Rand's products had been required to pass 2,000-hour tests at its own expense, while the Navy tested CECO's products for only 500 hours at the Navy's expense before finding that they were technically acceptable. Rand concedes that DLA may change its qualification procedures but insists that the changes must be spelled out in the solicitation and that this was not done here in either case. Rand then contends that:

> "In the absence of any other requirements those applicable to the specified part and manufacturer apply. The 2000 hour test and compressor qualification procedure are as much a requirement of that part as are the detailed dimensions materials and manufacturing processes."

As a preliminary matter, we point out that our Office has consistently taken the position that the procuring agencies have the primary responsibility for drafting specifications that reflect their actual needs. See D. Moody & Co., et al., 55 Comp. Gen. 1 at 17 (1975), 75-2 CPD ¶ 1 at 23. Thus, we have held that the responsibility for establishing the testing procedures necessary to determine product acceptability is within the expertise of the cognizant technical activity. Id.; Aeronautical Instrument and Radio Co., B-190920, Oct. 13, 1978, 78-2 CPD ¶ 276 at 4. The agency's determination of its needs will not be questioned by our Office unless the protester shows that the determination is unreasonable. H.L. Carpenter Co., B-220032, Nov. 21, 1985, 85-2 CPD ¶ 586.

It is a well-established principle of government procurement that all offerors must be treated equally and be provided with a common basis for the preparation and submission of their proposals. Host International, Inc., B-187529, May 17, 1977, 77-1 CPD ¶ 346. This does not mean, however, that because DLA required a 2,000-hour test years ago for Rand's compressor, DLA must require thereafter the same test before qualifying any similar products or components from other offerors. In fact, under the Defense Procurement Reform Act of 1984, 10 U.S.C. § 2319 (Supp. III 1985), the purpose of which is to encourage new competitors where there has been limited or no competition, agencies must, among other things, justify in writing the necessity for establishing testing requirements or other quality assurance demonstrations that must be complied with before contract award. In addition, potential offerors must be given opportunities to demonstrate

that their products meet the standards and in certain cases, an agency may bear a small firm's cost of conducting the required testing and evaluations. Moreover, the equal treatment principle must be interpreted to accommodate the equally well established principle that each procurement is a separate transaction and that the acceptability of a proposal depends upon the facts and circumstances of that particular procurement and not upon prior procurements. Alfa-Laval, Inc., B-221620, May 15, 1986, 86-1 CPD ¶ 464; Shannon Services, Inc., B-220367.4, Apr. 28, 1986, 86-1 CPD ¶ 411. Furthermore, an agency must evaluate proposals only on the basis of the factors and requirements specified in the solicitation in response to which they were submitted. Cardkey Systems, B-220660, Feb. 11, 1986, 86-1 CPD ¶ 154. Thus, any requirements under which Rand previously conducted a 2,000-hour test cannot be carried over to these procurements because that requirement was not specified in these RFPs.

Rand has not cited any statute, regulation or decision, and we are aware of none, that supports its contention that, in the absence of specified test requirements, those applicable to the specified part and manufacturer apply. Accordingly, Rand has not shown that DLA's determination of its minimum needs is unreasonable and this portion of the protest is denied. Moreover, as the objective of our bid protest function is to insure full and open competition for government contracts, our Office generally will not review a protest that has the explicit or implicit purpose of reducing competition. In other words, a protester's presumable interest as the beneficiary of a more restrictive specification is not protectable under our bid protest function. California Mobile Communications, B-224398, Aug. 29, 1986, 86-2 CPD ¶ 244. Thus, to the extent that Rand is asking that all offerors be required to conduct 2,000-hour tests to qualify their products, it is asking for a restriction on competition which is not an issue which will be considered by our Office.

Rand further contends that if it had been able to base its offers on the "reduced requirements offered to all bidders," it could have offered alternative parts for analysis and qualification at government expense. By not being offered that opportunity, Rand contends that the agency favored CECO. The simple answer to this concern is that there is nothing in either RFP that prohibited Rand from submitting alternative products if it had chosen to do so. Compare Sargent Industries, B-216761, Apr. 18, 1985, 85-1 CPD ¶ 442, wherein the contracting agency improperly transformed a sole-source procurement into a competitive acquisition and

accepted an unsolicited proposal for an "equal" product without first amending the solicitation to put the original offeror on notice that competitive offers of "equal" parts were being solicited. We find nothing in the record which indicates that Rand was required to do anything with regard to these RFPs that CECO was not required to do. In fact, because CECO offered alternative products, it was subjected to acceptance requirements that were not required of Rand. We therefore find no merit to Rand's contention that DLA discriminated against it or that it was treated unfairly or unequally.

With regard to Rand's contention that the contracting officer improperly failed to consider in her evaluations the government's costs incurred in qualifying CECO's alternative products, we point out that there was nothing in the RFPs that would indicate that the evaluation of such costs was contemplated. Since the RFPs did not provide for consideration of these costs in the evaluation, the contracting officer had no authority to do so. McNaughton Book Service, B-221299, Apr. 4, 1986, 86-1 CPD ¶ 326. Moreover, to the extent that Rand may have considered the omission of performance test costs from the evaluation to be improper, it should have protested this issue before the closing date for receipt of the initial proposals. As it did not do so in either procurement, its protests on this point are untimely and not for consideration on their merits under our Bid Protest Regulations (4 C.F.R. § 21.2(1)(a) (1986)) which require that protests based on alleged improprieties in an RFP that are apparent prior to the closing date for receipt of initial proposals be filed prior to the closing date. See Morris Marine, Inc., B-223289.2, June 19, 1986, 86-1 CPD ¶ 569.

Rand also protests the contracting officer's failure to discuss Rand's prices or to indicate the competitive standings of Rand's proposals. As the contracting officer desired to make award on the basis of initial proposals, it would have been improper for her to have had discussions with either Rand or CECO without also holding discussions with the other. Discussions are not required when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience that acceptance of the most favorable initial proposal would result in the lowest overall cost to the government at fair and reasonable prices, provided that the RFP advises offerors of this possibility and discussions are in fact not held. See Federal Acquisition Regulation (FAR) 48 C.F.R. § 15.610 (a)(3)

(Federal Acquisition Circular 84-16, May 30, 1986); Sperry Corp., 65 Comp. Gen. 195, 197 (1986), 86-1 CPD ¶ 28 at 4. Here, Rand does not contend that the competition under the RFPs was inadequate or that the government did not obtain fair and reasonable prices that would result in the lowest overall costs. Moreover, the RFPs incorporated by reference the FAR provision at 48 C.F.R. § 52.215-16 (1985), which informs offerors that the government reserves the right to make award on the basis of initial offers without discussions. As pointed out above, there were no discussions conducted with regard to these procurements. Furthermore, based upon the competition in each procurement, the contracting officer determined that CECO's offered prices were fair and reasonable. Accordingly, we find no improprieties in the contracting officer's determinations not to conduct discussions. Therefore, this portion of the protest is denied.

Rand insists that in each case it first knew that this was a competitive procurement when it received the notice of award to CECO. Rand alleges that it thought that the use of RFPs rather than the customary RFQ, used in the past for the procurement of these items, was due to error by the government's buyer. Rand states that it expected sole-source contracts since only its items had passed the required qualification tests and the government did not own the detailed drawings and data necessary for manufacturing the items.

We think that Rand should have known that these procurements were competitive and find that the contracting officer was under no obligation to inform Rand specifically that this was so. The RFPs clearly indicated that alternative products would be considered and they described the information required to enable the government to determine if the alternative products were equal to the Rand product specified in the RFPs. Moreover, Rand has had considerable experience with government contracts and with protests to our Office. Our decisions on previous Rand protests have several times emphasized that our Office will not review protests that agencies should procure spare parts from original equipment manufacturers on a sole-source basis and that producers of alternative products must be given opportunities to qualify

their products. Ingersoll-Rand Co., B-209778, Dec. 15, 1982, 82-2 CPD ¶ 536; Ingersoll-Rand Co., B-205792, Jan. 8, 1982, 82-1 CPD ¶ 26; Ingersoll-Rand Co., B-203727, July 2, 1981, 81-2 CPD ¶ 6.

The protests are denied in part and dismissed in part.

for Seymour Efros
Harry R. Van Cleve
General Counsel