



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Radalab, Inc.

File: B-225662.2

Date: May 15, 1987

DIGEST

1. Based on evidence in the record, GAO cannot conclude that procuring agency deliberately attempted to delay processing of protester's qualified products list (QPL) application in order to preclude protester from competing under QPL procurement.

2. Award to low qualified source was proper where record shows that award was delayed approximately 5 months during which time the agency determined it would need more time to qualify protester, that award could not be delayed further due to the need for item, adequate competition was obtained because all five qualified sources competed and protester has not shown that award was made to next low bidder at an unreasonable price.

DECISION

Radalab, Inc., protests the award of a contract to Sonetronics, Inc. under invitation for bids (IFB) No. DLA900-86-B-4159, issued by the Defense Electronics Supply Center, Defense Logistics Agency (DLA) for the procurement of M138/G dynamic microphones.^{1/} Radalab contends that DLA unreasonably delayed the approval to begin testing on Radalab's microphones thereby preventing Radalab's microphones from being qualified in time for contract award.

We deny the protest.

The IFB was issued on September 2, 1986. The solicitation required that items offered had to be either listed in or eligible for inclusion on the applicable qualified products

^{1/} DLA states that the microphones are critical components of the headset and helmet communications gear worn by crew members of combat units such as the M-1 and Sheridan tanks personnel as well as by the gun crews for the Chaparral/Vulcan guns.

list (QPL) prior to award. The IFB warned bidders that unless it was determined to be in the government's interest, the procurement "will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification."

By October 14, 1986, the bid opening date, six bids were received. According to DLA, all bidders except Radalab offered microphones which were qualified under the applicable specifications. Radalab's low bid indicated that Radalab was "in [the] process" of receiving qualified product listing. In addition, by letter dated October 14, Radalab indicated that it had received first article approval on a H161/D headset under another DLA contract and that the M138/G microphones are included in the H161/D headset.

Because Radalab was the low bidder and indicated in its bid that it was in the process of obtaining qualification approval, the contracting officer forwarded Radalab's October 14 letter to the Technical Operations Division (TOD) requesting information as to the estimated amount of time that it would take Radalab to complete testing and obtain qualification for its microphones. The TOD forwarded this information to the 2750th Air Base Wing, Air Force Logistics Center, Wright Patterson Air Force Base, Ohio (Air Force), which is the specification preparing activity for the M138/G microphones and which is responsible for the qualification procedures. According to DLA, the Air Force's responsibility includes the inspection and approval of the production and testing facilities of new sources attempting to obtain qualification approval, the review and evaluation of test samples, and the addition of new items to the QPL once they have successfully passed qualification testing and have been approved for inclusion on the QPL.

In early January 1987, the TOD, using information supplied it by the Air Force, notified the DLA contracting officer that Radalab would not be granted QPL status for the M138/G microphone based upon its first article approval of Radalab's H-161/D headset because a less stringent specification was applied for the M138/G microphones in the headsets under Radalab's prior contract than are presently used for the M138/G microphones under the instant solicitation. In addition, the TOD notified the contracting officer that it took Radalab over 2 years to pass the first article test and that deviations from the specifications were required. Finally, the TOD reported that the Air Force stated that the approximate time for QPL testing of the microphones is generally 6 to 12 months.

The contracting officer considered the facts that Radalab had not yet begun its QPL testing, that approval would probably take at least an additional 6 months, that such delay would seriously jeopardize DLA's stock position for the microphones, and that maximum competition had been obtained since all five qualified sources participated in the bidding. Based upon these considerations, award was made on March 9, 1987, to Sonetronics, the low bidder offering a qualified product under the IFB.

Radalab contends that it was denied an opportunity to compete for the award under this procurement "by the deliberate refusal of the procuring agency to give timely approval to Radalab to begin qualification testing." Radalab states that it was not asking that contract award be delayed but instead "was willing to gamble that the tests could be completed and successfully passed by the time a contract was awarded." Radalab states that it applied for qualification testing in late August 1986, and it was not until January 29, 1987, that the facilities audit, the prerequisite to product testing, was conducted.

DLA states that the (approximately 5 month) delay in inspecting Radalab's facilities was not unreasonable when -- considering the surrounding circumstances. Radalab was notified by the Air Force, on September 9, 1986, that a facility audit would be necessary before the Air Force could authorize qualification testing. The Air Force also notified Radalab that they would arrange the audit as soon as the required personnel were available. However, due to limited Air Force personnel and travel funds, the Air Force decided, by letter dated October 14, 1986, that DLA should conduct the audit. DLA states that on October 27 it received the Air Force request that DLA conduct the audit. DLA assigned an engineer to conduct the audit who was most familiar with Radalab's prior attempts (and failures) to pass the tests based upon the prior version of the M138/G specifications. However, according to DLA, due to the engineer's workload and other prior work commitments he was not able to conduct the audit until the end of January 1987.

DLA states that once the audit was performed there were deficiencies noted which precluded approval of the Radalab facilities and authorization to proceed with qualification testing. DLA further states that it was not until the end of March, 9 weeks after the audit was conducted, that Radalab supplied the information requested as a result of the facilities audit. Finally, DLA argues that it was not required under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.203(a), 9.206-1(c) (1986), to delay award

until Radalab qualified its microphones and that qualification should have been initiated by Radalab in advance and independently of any specific acquisition action. DLA contends, therefore, that because Radalab did not qualify its microphones prior to the issuance of the IFB, it ran the risk of having its bid rejected if it could not establish that its microphones would be qualified by the time of award.

We have held that a protester's mere allegation that the agency's procedures for approving alternate products or sources takes more time than the protester believes is necessary is not a showing that the procedures fail to provide a reasonable competitive opportunity. See Rotair Industries, Inc., B-224332.2; B-225049, Mar. 3, 1987, 87-1 C.P.D. ¶ 238.

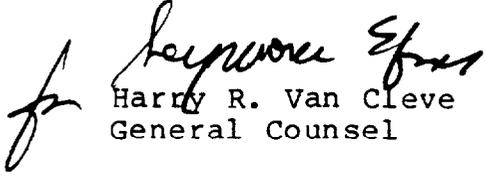
Radalab has not shown that DLA (or the Air Force) deliberately attempted to delay the processing of Radalab's QPL application in order to preclude Radalab from competing on this procurement. If anything, it appears that DLA delayed the award, between November and March, in order to give Radalab a chance to compete, until it became clear that Radalab would not qualify in a timely fashion. In any case, the protester has the burden of affirmatively proving its case, and we will not attribute improper motives to procurement personnel on the basis of inference or supposition. W.H. Mullins, B-207200, Feb. 16, 1983, 83-1, C.P.D. ¶ 158. Radalab has not shown that DLA or the Air Force deliberately delayed Radalab's qualification in order to preclude it from competing.

We agree with DLA that contractors generally should seek qualification in advance and independently of any specific acquisition action. FAR, 48 C.F.R. § 9.203(a). Radalab contributed to its failure to qualify for this procurement due to the fact that it did not attempt to qualify until shortly before bid opening under this acquisition.

The record further shows that full and open competition was achieved since as stated above, all five qualified sources competed. Further, Radalab has not shown Sonetronics' bid, which was second low, to have been unreasonable in price. See Electro Marine Industries, Inc., B-205999, July 21, 1982, 82-2 C.P.D. ¶ 65. Finally, DLA has indicated that a lengthy delay in the award could have created an inventory

shortage for the microphones. In these circumstances, we cannot object to the award to Sonetronics.

The protest is denied.

A handwritten signature in cursive script, appearing to read "Harry R. Van Cleve".

Harry R. Van Cleve
General Counsel