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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Valcor Engineering Corporation

File: B-227019; B-227020

Date: August 10, 1987

DIGEST

Contracting agency reasonably and properly accepted offers of valves other than the brand name models specified in the solicitation, even though the offeror has never produced the items, where the Products Offered clause permitted offers of alternates that are physically, mechanically, electronically and functionally interchangeable with the brand-name models and the offers contained both drawings complying with the requirement for interchangeability and first article test procedures ensuring satisfactory production.

DECISION

Valcor Engineering Corporation protests the award by the Defense Construction Supply Center (DCSC), Defense Logistics Agency, of two contracts to Westfield Hydraulics, Inc. under request for proposals (RFP) Nos. DLA700-86-R-1220 and DLA700-87-R-0206. The first RFP was for 2768 solenoid fuel valves classified by the agency as critical parts for an aircraft engine, while the second RFP was for 2654 solenoid air valves classified as noncritical parts for ground support equipment. Each RFP specified two acceptable brand-name models, manufactured by Valcor and Garrett Corporation, and included the "Products Offered" clause permitting offers of alternate products physically, mechanically, electrically and functionally interchangeable with the specified brand-name models. Westfield offered alternate products for each valve, which the agency accepted after obtaining Westfield's agreement to subject its first articles to certain tests not contained in the RFPs. Valcor argues that DCSC unreasonably determined Westfield's products to be acceptable alternates, and improperly accepted the first article testing procedure as a substitute for the required demonstration of interchangeability.

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We deny the protest.

The Products Offered clause generally is used to procure replacement parts, as here. The clause explains that the RFP specifies brand-name models that the government knows are acceptable (most often the models that have been approved by the original equipment manufacturer) and that the government lacks detailed specifications or sufficient data to determine the acceptability of other products. The clause therefore provides that, while offers of alternate products will be considered, offerors must clearly describe the characteristics of the alternates and furnish with their offers drawings, specifications or other data covering "design, materials, performance, function interchangeability, inspection and/or testing criteria and other characteristics" of the product. The clause warns that failure to furnish complete data and information required to establish sufficiently the acceptability of the product may preclude consideration of the offer.

The RFP for fuel valves originally was issued on February 24, 1986, with a March 27 closing date for submitting proposals. No timely offers were submitted, but Valcor and Westfield submitted offers on April 14 and June 3, respectively. Valcor offered its brand-name model specified in the RFP and Westfield offered its own alternate based on reverse engineering of a specified model obtained through DCSC. Westfield also submitted drawings of its part to DCSC's Value Engineering Office for evaluation. That office concluded that the drawings were acceptable, but determined that, since Westfield had not manufactured a conforming article, first article testing should be required as a condition of accepting Westfield's proposed alternate. Westfield agreed to the requirement.

DCSC reissued the RFP on January 5, 1987 to obtain timely offers, and Valcor and Westfield again submitted offers, Westfield's offer incorporating the agreed upon first article testing procedures. For final evaluation, DCSC referred Westfield's offer to the user activity, which formally determined Westfield's alternate to be acceptable. After discussions, Valcor offered a unit price of $199.34 for its fuel valve and Westfield offered $151.11 for its alternate.

In response to the air valve RFP, issued on November 7, 1986, Westfield proposed an alternate and explained that the air valve is essentially identical to the fuel valve. The offer further explained that DCSC previously had approved Westfield's test procedures for the fuel valve and asked that it approve the proposed alternate air valve on the

basis of similar test procedures, together with Westfield's drawings. DCSC determined Westfield's offered alternate air valve acceptable on this basis. After discussions, Valcor's unit price for its model was $196.31, while Westfield's price was $139.74.

The protester basically contends that pursuant to the Products Offered clause the contracting agency could only accept an alternate for which the offeror submitted data reasonably demonstrating interchangeability with the specified brand-name models, and that Westfall's design drawings, by themselves and without performance data, failed to establish interchangeability. The protester also contends that first article testing is not an appropriate substitute for the necessary data to establish interchangeability because such testing occurs after award whereas interchangeability must be established as a precondition to award. Even assuming first article testing is appropriate, Valcor argues further, the testing procedures incorporated into Westfield's proposals are not sufficient to establish interchangeability since the procedures do not test compliance with certain performance specifications of the brand name models. Finally, the protester questions whether Westfield is contractually obligated to conduct and pass those tests included in its proposal.

The agency responds that, based on the Value Engineering Office's comparison of the Westfield drawings (which contained performance requirements in notes) to the Garrett and Valcor drawings and a Valcor stock part, it found the dimensions to be identical. The Westfield drawings also corresponded with all the design and performance requirements of the Valcor and Garrett drawings. In light of the unavailability of data demonstrating that the manufactured alternate indeed would conform to the drawings, DCSC states it required Westfield to include first article testing procedures in its proposal and the resulting contracts. DCSC argues that based on the drawings and the first article testing requirements, it had a reasonable basis to determine Westfield's alternate acceptable. Regarding the air valve, the agency states that acceptance of Westfield's alternate reasonably was based on a comparison of Westfield's drawing to limited data of the original equipment manufacturer, and on the similarity of the air valve to Westfield's proposed fuel valve already found acceptable by DCSC.

Evaluating offers of alternative products pursuant to the Products Offered clause essentially involves a determination of the offer's technical acceptability (that is, compliance with the technical requirement to describe clearly the characteristics of the product and to establish its interchangeability with the brand-name product) and not an

evaluation of the alternate itself. See Federal Acquisition Regulation, 48 C.F.R. § 15.608 (1986). Contrary to the position implicit in Valcor's argument that performance data must be required, there simply is no absolute requirement that the offeror have previously produced or tested the item unless the RFP expressly requires proven performance of the alternate as a precondition of award (as in a requirement for acceptance on a qualified products list, for example).

The question whether an offeror can sufficiently demonstrate the technical acceptability of its offer of an alternate based on information aside from test results or other proven performance data depends on the circumstances of the particular procurement, taking the nature and function of the equipment into account. See Sony Corp. of America, B-225512, Feb. 24, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 212. The contracting agency is responsible for evaluating the information supplied by an offeror and ascertaining whether it is sufficient to establish the technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. Id. We will not disturb the agency's determination unless it is shown to be unreasonable. Hose Co., Inc., B-224122, Mar. 6, 1987, 87-1 CPD ¶ 258.

Moreover, we believe that to be consistent with the statutory requirement for specifications permitting full and open competition, which means that all responsible sources are permitted to compete, 10 U.S.C. § 2305(a)(1) (Supp. III 1985) and 41 U.S.C. § 403(7) (Supp. III 1985), the Products Offered clause must be construed as giving the agency broad discretion to accept offered equivalent products. Cf. GALE Corp., B-201657, May 5, 1981, 81-1 CPD ¶ 343 (indicating that the clause restricts competition and is only appropriate where the agency lacks sufficient data to develop detailed specifications). Consistent with meeting the agency's needs and being fair to all offerors, the acceptance of lower-priced alternates is the preferred result since it promotes competition and the possible development of detailed specifications for future procurements. See Sony Corp. of America, B-225512, supra. The agency may not, however, relax the requirement for physical, mechanical, electrical and functional interchangeability without amending the RFP and giving all sources an opportunity to compete on an equal basis. See Hobart Brothers Co., B-222579, July 28, 1986, 86-2 CPD ¶ 120. (Of course, since the protester did not offer an alternate model, it was not subject to the interchangeability requirement in any event.)

Under the circumstances of this case, we believe the agency reasonably accepted Westfield's offered alternates. While the fuel valve has a critical application, nothing in the record indicates that the valves involve some secret or unusually complex process that cannot readily be duplicated by other sources. Westfield's drawings of the offered alternate, developed through reverse engineering, completely complied with the RFP's requirement for interchangeability, and Westfield's agreement to subject their valves to first article testing requirements provided the agency a mechanism (other than performance data) to assure that Westfield would provide an article conforming to the drawings. Westfield is obligated to comply with the testing procedures because they were incorporated into the contracts.

As for using a first article testing procedure to establish the acceptability of an offered alternate, we find nothing inappropriate or improper with this approach, which clearly operates to expand competition. The Products Offered clause specifically requests information about inspection and/or testing criteria, and consideration of testing procedures appears to be a legitimate means of determining risks associated with an offer.

In considering Westfield's testing procedures, DCSC was not required to reject Westfield's offers on the basis that they may have failed to provide testing procedures for each and every performance requirement, since specific test were not required by the RFP. See Ingersoll-Rand, B-224706, B-224849, Dec. 22, 1986, 86-2 CPD ¶ 701. The amount of testing to reasonably establish that the manufactured items will fully conform to the drawings is a matter of agency discretion. Westfield's testing procedures, even if not inclusive of all performance requirements, were extensive and reasonably supported the agency's determinations of technical acceptability.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel