



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Blackmer Pump
File: B-231474
Date: September 9, 1988

DIGEST

Contracting agency reasonably found valve offered as alternate to specified brand-name model to be technically acceptable where the Products Offered clause in the solicitation permitted offers of alternates functionally interchangeable with the brand-name model, and the offer contained a drawing and descriptive literature showing compliance with the requirement for interchangeability.

DECISION

Blackmer Pump protests the award of a contract by the Defense Construction Supply Center, Defense Logistics Agency (DLA), to Classic Manufacturing, under request for proposals (RFP) No. DLA700-87-R-2491, for rotary pump vanes to be used by the Navy. The pump itself is manufactured by Blackmer and is used to defuel helicopters aboard ship. The RFP specified an acceptable brand-name model manufactured by Blackmer and included the "Products Offered" clause permitting offers of alternate products interchangeable with the specified Blackmer model. Blackmer primarily argues that DLA unreasonably determined Classic's product to be an acceptable alternate.

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

The Products Offered clause explains that the RFP specifies brand-name models that the government knows are acceptable (most often 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,

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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 solicitation provided that award would be made to the lowest-priced technically acceptable offeror.

In response to the solicitation, the agency received six offers. Blackmer offered its brand-name model at a unit price of \$34.85; Classic offered its own alternate, based on reverse engineering of the specified Blackmer model, at a unit price of \$26.45. During the evaluation of Classic's alternate item, discussions were held only with Classic, as the other offerors each submitted technically acceptable offers. Classic's alternate offer initially was rejected for incorrect dimensions and material composition but, based upon Classic's resubmission with revised dimensions and material and a corrected drawing, its offered item was determined functionally interchangeable with the Blackmer model and therefore technically acceptable. Best and final offers were requested and Classic increased its price to \$28.54 per unit, still the low offer. DLA therefore made award to Classic on January 13. Blackmer protested to our Office after receipt on May 9 of the denial of its original protest to the agency.

Blackmer basically contends that Classic's offered alternate item could not reasonably be determined to be interchangeable with the brand-name product due to (1) the proprietary nature of the material of which its own vane is constructed, and (2) the lack of performance data submitted to the agency, as well as the failure of the agency to subject Classic's part to performance testing or other quality assurance requirements. The protester complains that while Classic submitted material and dimensional data, it did not submit data specifically addressing other criteria, such as performance and testing. Under these circumstances, the protester contends that first article testing, at least, should be required, since Classic has not previously manufactured the product.^{1/}

^{1/} At the conference on this protest, the agency disclosed that a required reevaluation of the acceptability of Classic's alternate item should have been, but was not, conducted here because the part is critical rather than noncritical as originally believed. Although that reevaluation now is in progress, it may not be completed for some time. Therefore, we are proceeding with our decision based on the evaluation already conducted.

Evaluating offers of alternate products pursuant to the Products Offered clause essentially involves a determination of the technical acceptability of the proposal (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 item itself. Whether an offeror presents sufficient information, aside from test results or other proven performance data, to demonstrate the technical acceptability of its offer of an alternate is essentially a technical judgment committed to the agency's discretion, and depends on the circumstances of the particular procurement, taking the nature and function of the equipment into account, i.e., whether there is adequate assurance that the equipment in which the part will be used will perform properly. See Sony Corp. of America, 66 Comp. Gen. 286, (1987), 87-1 CPD ¶ 212.

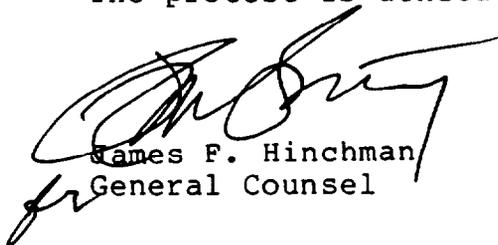
We construe the Products Offered clause as giving the agency broad discretion to accept offered equivalent products; the acceptance of lower-priced alternates is the preferred result, since it promotes competition and the possible development of detailed specifications for future procurements. Accordingly, we will not disturb the agency's determination unless it is shown to be unreasonable. Valcor Engineering Corp., 66 Comp. Gen. 613 (1987), 87-2 CPD ¶ 143.

Here, we believe the agency's determination of the technical acceptability of Classic's alternate item was reasonable based on the dimensional and material information submitted and considered. Classic's offer, developed through reverse engineering, included a drawing and additional descriptive literature concerning material composition submitted to comply with the RFP's requirement for establishing interchangeability. DLA states that the materials submitted satisfactorily established equivalence. Specifically, based on a comparison of the corrected Classic drawing to an unrestricted Blackmer drawing on file and three Blackmer stock parts, DLA found the dimensions to be essentially identical. Similarly, with respect to material composition, the agency was satisfied, based on the federal specification listed in Classic's drawing (L-P-509a, type 4, grade 9), along with descriptive literature from the manufacturer of the material offered by Classic, that Classic's material was equivalent to Blackmer's. While Blackmer states that the material composition of its vane is proprietary, the federal specification for the material was listed on an unrestricted drawing, and DLA used this information in

assessing Classic's equivalence.^{2/} We conclude that DLA reasonably determined that Classic's alternate item is acceptable under the terms of the Products Offered clause.

Blackmer further maintains that Classic's alternate item offer is not a suitable candidate for breakout, as there is a risk of degrading the end item and causing a safety hazard using any vane other than Blackmer's. The safety considerations involved in whether alternate parts should be acceptable, however, fall within the agency's discretion to determine its own minimum needs. It is our view that Blackmer does not have a sufficient interest to protest that competition should be limited based on these considerations. See Rhine Air, B-226970, July 29, 1987, 87-2 CPD ¶ 110.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel

^{2/} This aspect of Blackmer's protest suggests disagreement with the reverse engineering program itself, which is a policy matter not encompassed by our bid protest function.