



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rotair Industries, Inc.
File: B-232702
Date: December 29, 1988

DIGEST

1. Protest is sustained where agency's unreasonable delay in processing source approval request prevented protester from becoming qualified in time to receive award under request for quotations for helicopter part.
2. Protester is entitled to recover the cost of filing and pursuing its protest, including reasonable attorneys' fees, as well as its quotation preparation costs, where the protester was improperly denied a fair opportunity to compete for award.

DECISION

Rotair Industries, Inc., protests the award of a contract under request for quotations (RFQ) No. DLA500-88-T-D149, issued by the Defense Logistics Agency (DLA) for helicopter parts on a source controlled basis. The protester believes that it was denied the opportunity to compete for award due to the agency's unreasonable delay in processing Rotair's source approval request.

We sustain the protest.

On January 28, 1988, the Defense Industrial Supply Center (DISC), a DLA field activity, issued the RFQ for production and delivery of 150 grooved, headed pins, identified by a Sikorsky Aircraft part number. The RFQ contained a "Products Offered (APR 1985)" clause that described informational requirements for vendors offering alternate products, i.e., pins other than the "exact product" (the Sikorsky part or a part manufactured by Sikorsky's supplier). This clause warned that alternate products had to be either identical to or physically, mechanically, electrically and functionally interchangeable with the Sikorsky part and advised vendors that the government might not have sufficient data to evaluate the technical acceptability of alternate products. Vendors therefore were

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required to submit all drawings, specifications and other data necessary to establish the design, materials, performance, function, interchangeability, inspection and testing criteria of any proposed alternate product.

Four vendors responded by the February 18 closing date. One of these four, E.O. Manufacturing Co., Inc., offered the exact product; three vendors, including the protester, offered alternate products. In accordance with the "Products Offered" clause, the contracting officer asked vendors offering alternate products to submit the data necessary to obtain source approval. The protester submitted its technical data on March 3, 1988.

In May, the contracting officer was advised by DISC's Directorate of Supply Operations that helicopters were being grounded for lack of spare parts and that an immediate award was required. On June 9, 1988, Rotair inquired as to the status of the evaluation of its technical package and was advised by DISC that its quote was still being evaluated. On July 6, 2 months after the contracting officer was advised of the need for immediate award and 4 months after Rotair had submitted its source approval request, the contracting officer first referred the protester's source approval request to DISC technical personnel for review. On July 11, the agency awarded a purchase order to E.O. Manufacturing, as the only acceptable source, at a unit price of \$130, \$28.22 more per unit than the protester's February quote of \$101.78. The technical evaluators returned Rotair's source approval data package to the contracting officer on July 21, advising him that certain process specifications would be needed before the protester's data package could be evaluated. The protester was not advised of the need for this information. On September 9, in response to a series of inquiries from Rotair, DISC notified the protester of the award to E.O. Manufacturing and advised it that its offer had been determined to be technically unacceptable. Rotair filed this protest on September 22.

Upon receiving notice of the protest, the contracting officer contacted Rotair to ascertain whether the protester in fact possessed the process specifications the omission of which had prevented the agency from approving Rotair's request in July. The protester provided a copy of the specifications to the contracting officer, who referred the protester's source approval request to agency technical evaluators for the second time on October 11. On October 18, the evaluators advised the contracting officer

that the protester's request was approved. Approval of the protester's request had taken 3 weeks of actual processing time but had been delayed an additional 6 months by agency inaction.

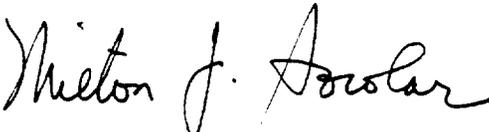
Our Office has recognized that, in appropriate circumstances, the procurement of items on a source controlled basis is permitted. JGB Enterprises, Inc., B-218430, Apr. 26, 1985, 85-1 CPD ¶ 479. However, we have also held that the authority to solicit from an approved source does not preclude submission and consideration of alternate proposals. Hill Industries, B-210093, July 6, 1983, 83-2 CPD ¶ 59. Further, the evaluation of alternate proposals by an agency must be accomplished in a reasonable time without any unnecessary delay. See Freund Precision, Inc., B-223613, Nov. 10, 1986, 86-2 CPD ¶ 543. The agency concedes that it failed to meet this obligation when it did not process the protester's source approval request in a timely fashion. The agency report indicates that the technical data deficiencies were minor in nature and easily curable and that if Rotair's data package had been referred promptly for technical evaluation in early March, the deficiencies which were discovered when the delayed evaluation ultimately took place could have been easily and timely cured to permit award to Rotair as the low acceptable source. Accordingly, Rotair clearly was denied a reasonable opportunity to compete for award. See Aero Technology Co., B-227374, Sept. 25, 1987, 87-2 CPD ¶ 301. Thus, we sustain Rotair's protest.

Regarding the appropriate remedy, the agency argues that there is none and that the protest should therefore be dismissed as academic. The agency reports that on October 5, 1988, its quality assurance representative accepted the supplies from E.O. Manufacturing at the packager's plant. Furthermore, DISC will be adding Rotair to the item description as an acceptable source for future acquisitions. In addition, DLA will be issuing a notice to all of its field activities emphasizing the need for prompt processing of source approval requests; DLA also plans classes at DISC for procurement and technical personnel concerning proper processing of alternate offers and the applicable statutory and regulatory requirements. The agency therefore believes that it has already taken all appropriate remedial action.

Since the supplies under this purchase order have been delivered and accepted, termination of the order is no longer an available remedy. While we agree with DISC's

remedial efforts, these are not in fact the only appropriate remedies available under our Bid Protest Regulations. 4 C.F.R. Part 21 (1988). A protester may be awarded the reasonable costs of filing and pursuing its protest, including attorneys' fees, and bid or proposal costs, where our Office determines that a solicitation, proposed award or award does not comply with a statute or regulation. 4 C.F.R. § 21.6(d). We have held that a protester is entitled to recover such costs where, as here, the agency's improper actions have prevented the protester from having a fair opportunity to compete for the award. See Huntington Construction, Inc., B-230604, June 30, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 619. Accordingly, by separate letter of today, we are advising the Director of DLA that Rotair is entitled to recover its costs of filing and pursuing the protest, including reasonable attorneys' fees, as well as its quotation preparation costs. Rotair should submit its claims for such costs directly to the agency. 4 C.F.R. § 21.6(e).

The protest is sustained.

for 
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of the United States