

T. S. 10



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Newgard Industries, Inc.
File: B-234010
Date: April 11, 1989

DIGEST

Unwarranted delays in agency's alternate source approval process that prevented prompt qualification of protester's product is not basis for sustaining protest where agency canceled the solicitation with the intention of postponing the acquisition until approval of the protester's product was completed, and then proceeded to complete approval of protester's product; protester will have opportunity to compete for requirement and thus was not competitively prejudiced by the delays.

DECISION

Newgard Industries, Inc., protests the delay in making award under, and subsequent cancellation of, request for proposals (RFP) No. F41608-88-R-0707, issued by the Department of the Air Force for three-man troop seats to be used in C-135 aircraft. We deny the protest.

The RFP, issued on February 26, 1988, was restricted to the known qualified sources, Oro Manufacturing Company and C.R. Daniel, Inc., but also permitted unapproved sources to submit proposals for qualification review. Three proposals were received by the March 26 closing date, one of which subsequently was withdrawn. The two remaining proposals were those of Oro, offering the approved equipment, and Newgard, offering an unapproved troop seat for qualification review and testing. Newgard's proposal was immediately forwarded to the review activity, even though Newgard had not submitted a detailed technical proposal from which the acceptability of its seat could be determined; it included information related to similar seats (two-man instead of three-man) Newgard previously had furnished. In response to an Air Force request, Newgard furnished the proper drawings in late April.

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In late May, approval of Newgard's seat was withheld based on the agency's realization that the seat would have to be evaluated against Boeing Corporation data that was believed unavailable. Although the seat was by now in short supply, award was not made to Oro and in early August, after learning that the Boeing data should in fact be available to the agency through a preexisting agreement with Boeing, the agency asked that Newgard furnish a sample seat. Newgard did so, but as of early September the Air Force did not yet have the Boeing data. Later in September, the agency did get the data for evaluating Newgard's sample, but decided at this juncture that Newgard's seat should be subjected to the same approval requirements imposed on the other approved sources, including the furnishing of a test plan, pre-qualification testing, a test report, and flight testing. Newgard, advised of these requirements on October 24, furnished the test plan November 4, and submitted the test results December 2.

In November, the quantities of seats required was more than doubled. Based on this fact, the lengthy delay in award, and the likely approval of Newgard's seat in the near future (after a 30-day flight test), the Air Force decided that the RFP should be canceled due to the likelihood of greater competition and lower prices. The RFP was canceled by amendment dated December 21. We have been advised by the Air Force that Newgard's troop seat recently was approved.

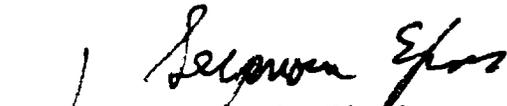
Newgard concedes that contracting officials appear to have acted in good faith in trying to get its product approved, but nevertheless argues it improperly was denied a reasonable opportunity for approval here due to the agency's lack of even the most basic preparation--i.e., failure to obtain the Boeing data necessary for approval--and unwarranted delays. Newgard concludes that, had it not been for these failures on the agency's part, cancellation would have been unnecessary, and asks that it receive the award under the original RFP.

While we have sustained protests based on an agency's failure to provide for prompt qualification of an alternate source, Pacific Sky Supply, Inc., 66 Comp. Gen. 369 (1987), 87-1 CPD ¶ 358, the facts here do not warrant such a result. As already explained, the Air Force canceled the solicitation here with the intention of postponing the acquisition until the qualification of Newgard's troop seat, and Newgard's seat now has in fact been approved. Since the prompt qualification requirement is designed to ensure that a capable offeror will not unreasonably be precluded from receiving an award, and Newgard will have an opportunity to

compete for this award based on its newly qualified product, the firm has suffered no competitive prejudice that would warrant sustaining its protest.

Newgard does correctly point out that the cancellation will allow its competitors another chance to lower their prices now that they know Newgard is being considered. No offeror's proposed price or relative ranking has been disclosed in the course of this protest, however, and given that Newgard also has learned that Oro competed on the requirement, and will have the same opportunity to modify its offer in light of this information, we do not view the cancellation as giving any firm an unfair competitive advantage.

The protest is denied.



James F. Hinchman
General Counsel