



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chromalloy Gas Turbine Corporation

File: B-234272

Date: May 17, 1989

DIGEST

1. Protest challenging agency determination that alternate proposal in an approved source procurement for repair of aircraft engine parts was technically acceptable is denied since agency has primary responsibility for determining technical acceptability of alternate proposals and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

2. Protester's argument that it was not treated equally because it was not given the same opportunity to propose less rigorous repair procedure for aircraft engine parts as contained in alternate proposal is denied where protester identifies nothing in the solicitation that prohibited protester from also proposing the same repair procedure.

DECISION

Chromalloy Gas Turbine Corporation protests the award of a contract to Wall Colmonoy Corporation (WCC) under request for proposals (RFP) No. F41608-88-R-4687, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for overhaul and repair of F-100 aircraft engine parts. Chromalloy principally contends that WCC has not adequately demonstrated its technical capability as a qualified source to perform the services.

We deny the protest.

On March 4, 1988, the agency issued the RFP for a fixed-price requirements contract for a 3-year base period plus two 1-year option periods, for overhaul and repair of front

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compressor vanes used in F-100 aircraft engines.^{1/} Two previously approved sources--Chromalloy and Union Carbide Corporation--were listed in the solicitation. Clause M-25 of the solicitation advised potential offerors that the agency did not possess adequate data for performance and warned that the agency would consider offers from previously unapproved sources if it were able to determine prior to award that the services being offered would meet the agency's requirements. The agency advised that it would consider such offers only if the offeror provided the source of the data to be used in the performance of the contract, as well as a set of the data, and provided evidence that the services proposed would meet the agency's requirements. The solicitation provided for award to the lowest technically acceptable offeror.

The agency received three proposals on August 25, 1988, one from the protester and two from previously unapproved sources. The two unapproved sources provided information to establish their ability to repair the part; after determining all three offers to be technically acceptable, the agency awarded a contract to WCC as the lowest technically acceptable offeror on January 18, 1989. This protest followed.

Chromalloy argues that the agency miscalculated WCC's proposal because that firm had failed to submit data sufficient for the agency to determine WCC's ability to meet the RFP's requirements. The protester has not identified any informational deficiencies in WCC's submissions but does argue that the RFP requires the successful contractor to perform repair of the "outboard shaft journal" (one of numerous repair procedures) in accordance with Chromalloy's procedure which is specifically listed in the RFP's technical requirements. Since WCC has neither access to nor permission to use its proprietary procedure, Chromalloy argues that WCC could not have demonstrated its ability to perform prior to award.

The contracting agency has the primary responsibility for determining its minimum needs and for determining whether a previously unapproved alternate proposal will satisfy those needs since it is the agency that must bear the burden of difficulties incurred by reason of a defective evaluation. Sony Corp. of America, 66 Comp. Gen. 286 (1987), 87-1 CPD ¶ 212. Moreover, whether an offeror has presented

^{1/} The vanes are engine parts that have critical application since failure of the item could result in extensive engine damage and possible loss of life.

sufficient information to convince the contracting agency that its alternate proposal meets the agency's minimum needs is essentially a technical judgment committed to the agency's discretion. Id. In view of the agency's discretion to make such determinations, we will not question the agency's decision to accept a previously unapproved source's alternate offer in an approved source procurement unless the decision was tantamount to fraud or willful misconduct. Sony Corp. of America, 66 Comp. Gen. 286, supra.

The record before us contains evidence of neither fraud nor willful misconduct. We note that in justifying the RFP's qualification requirements, agency technical evaluators specifically advised the contracting officer that offerors such as WCC, which had repaired similar items for the F-100 engine manufacturer, could receive source approval prior to award, subject to lab analysis and testing of repaired parts after award. Agency technical personnel determined specifically that WCC had demonstrated a capability to perform repairs either through welding or by use of a process similar to Union Carbide's, involving machining and building up of areas to be repaired. The agency states that WCC had also demonstrated that it had successfully repaired a similar item using processes involving the full range and difficulty required for overhauling and repairing the front compressor vanes.

Concerning Chromalloy's allegedly proprietary repair procedure, the solicitation required that the contractor perform vane repair in accordance with a technical order, which, while listing the two approved sources, listed only Chromalloy's specific repair procedure for the outboard shaft journal. However, we do not interpret the RFP or the technical order as exclusively requiring use of the Chromalloy proprietary procedure. Nothing in the RFP suggests that interpretation. We note that if the solicitation was interpreted as requiring that repairs be accomplished by use of the protester's procedure, because it was the only one listed, a proposal from the second approved source, Union Carbide, which employs a different repair procedure, would be unacceptable. In short, we find such an interpretation inconsistent with the solicitation, which expressly provided for the acceptability of any offer from Union Carbide or from any other offeror which could demonstrate its ability to meet the agency's requirements, using its own repair procedures, at a level of performance and quality acceptable to the agency.

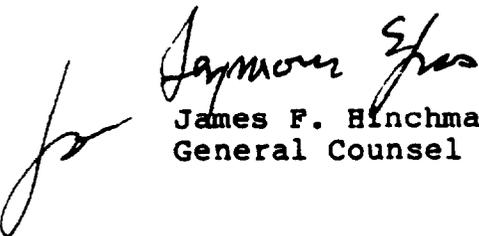
The protester also argues that no other method of repair will be as reliable as the method used by Chromalloy and that a more restrictive procedure should have been required

from WCC. However, the protester, in insisting on more rigorous qualification procedures, effectively seeks to eliminate its prime competitor. We note that consistent with the objective of our bid protest function to ensure full and open competition for government contracts, our Office generally will not review a protest that has the purpose or effect, whether explicit or implicit, of reducing competition to the benefit of the protester. Ray Service Co., 64 Comp. Gen. 528 (1985), 85-1 CPD ¶ 582; Rhine Air, B-266907, July 29, 1987, 87-2 CPD ¶ 110; Ingersoll-Rand Co., B-224706; B-224849, Dec. 22, 1986, 86-2 CPD ¶ 701.

Finally, the protester contends that the agency afforded WCC an unfair competitive advantage by relaxing its requirements to allow use of a less reliable repair procedure, while the protester had to undergo more rigorous qualification in the past to be approved to provide the repair services.

The requirement that procuring agencies extend equal treatment to offerors and provide a common basis for preparation and submission of proposals does not mean that an agency must impose qualification requirements imposed in the past but which it no longer deems necessary. Each procurement is a separate transaction, and an agency must evaluate proposals and approve sources on the basis of requirements existing at the time of evaluation and approval. The reviews, analysis and qualifications used in approving the procedures in the past need not be carried over to future procurements where the agency reasonably finds them unnecessary and the RFP does not require them. See Ingersoll-Rand Co., B-224706; B-224849, supra. Chromalloy has pointed to nothing in the RFP that would have prevented it from proposing alternate procedures if it so chose. We, therefore, find no merit to the protester's contention that the agency gave WCC an unfair competitive advantage.

The protest is denied.


James F. Hinchman
General Counsel