



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Murdock Enterprises, Inc.

File: B-236029

Date: November 6, 1989

DIGEST

Procuring agency's evaluation of alternate product as technically unacceptable was reasonable where the protester failed to supply sufficient information to establish the acceptability of its product as required by the solicitation.

DECISION

Murdock Enterprises, Inc. protests the award of a contract to Cummins Engine Company under Request for Proposals (RFP) No. DLA700-89-R-1409 issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), for cold start pumps to be used on diesel engines. Murdock contends that its alternate product, offered under the solicitation's "Products Offered" clause, is equal to the approved source item and that DLA should have accepted its lower-priced offer.

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

On February 24, 1989, DLA solicited offers for 133 cold start pumps identifying Cummins part No. 2012919 and Murdock part No. 851-3013919 as acceptable products. Amendment 0001 to the solicitation deleted the Murdock part number after the agency determined that Murdock had been erroneously approved under a previous solicitation.

The "Products Offered" clause also permitted offers based on alternate products not previously approved, but warned that such offers must include drawings, specifications, or other data covering "design, materials, performance, function, interchangeability, inspection and/or testing criteria, and other characteristics" of the product. The clause warned that failure to furnish complete data and

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information required to establish the acceptability of the product might preclude consideration of the offer.

By the March 27 closing date, the agency received two offers. Cummins offered its approved part at a unit price of \$411.16. Murdock offered its part as an alternate product at a unit price of \$368.89, and submitted a source control drawing that listed FCD Corporation as the supplier of the item.

On April 4, the agency notified Murdock by telephone that it needed drawings adequate for manufacturing, or "Level III" drawings. On April 6, Murdock submitted what it considered to be Level III drawings for both its model and the Cummins model. The agency determined that the information provided by Murdock was still inadequate to permit evaluation of its product; its offer therefore, was rejected as technically unacceptable by letter dated June 5.

Murdock argues that the drawings that it supplied with its offer were in fact Level III drawings and sufficient to meet the data requirements for an alternate product under the "Products Offered" clause. In any event, Murdock explains that it is in fact offering the same pump which will be supplied by Cummins, which, according to the protester, is manufactured by FCD Corporation.

Under the "Products Offered" clause, unless a firm is offering the exact product manufactured by the firm listed in the solicitation as qualified, the offer must be accompanied by data. The type of data required depends upon whether an alternate product is offered or the exact product is offered from a firm other than the listed qualified source.

Murdock's argument first concerns the rejection of its offer under the alternate product portion of the "Products Offered" clause. The agency concluded that the drawings submitted with the protester's offer did not cover the "design, materials, performance, function, interchangeability inspection and/or testing criteria" of the part as required by the clause.^{1/} The protester argues that they did.

^{1/} It is irrelevant whether or not the drawings submitted by Murdock are in fact Level III drawings as maintained by the protester. They must in any event be adequate for the agency to judge equivalency of the part under the solicitation.

The procuring agency is responsible for evaluating the data supplied by offerors and ascertaining if the data is sufficient to permit the agency to determine the acceptability of the product in question. Micro Lamps, Inc., B-229737, Mar. 18, 1988, 88-1 CPD 288. Accordingly, we will not disturb the agency's technical determination concerning the acceptability of the data submitted unless the record shows that it is unreasonable.

In our opinion, the agency's decision to reject the offer under the alternate product portion of the clause was reasonable. The clause clearly warned offerors of the necessity to furnish data adequate to establish sufficiently the acceptability of the alternate products. Despite the protester's contentions to the contrary, the limited dimensional drawings it submitted are clearly not the data required by the clause in that they merely list the performance characteristics of the pump and its outside dimensions and do not concern any of the pump's inner works. Consequently, we think the agency reasonably concluded that the data submitted did not permit it to determine whether the pump depicted was equal in all respects to the cited item.

Notwithstanding any technical infirmities in its alternate item offer, Murdock maintains that its rejection simply makes no sense because it is in actuality proposing the same FCD Corporation pump that Cummins will supply under the Cummins part number listed in the solicitation. In essence the protester here argues that it will supply the exact product listed in the solicitation so its "source control" or outline dimension drawing which includes the FCD part number should be sufficient for the agency to determine that its part is acceptable.

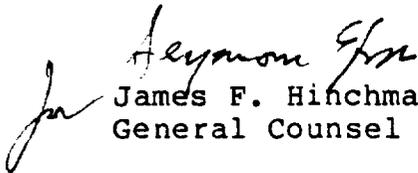
Under the "Products Offered" clause, if the exact product is offered by other than its manufacturer, the offer must include evidence, such as an invoice or other correspondence from the listed manufacturer, that the product is in fact the one listed in the solicitation. In addition, if, as is the case here, the product is manufactured for the firm listed in the solicitation, "evidence of approval and acceptance by the manufacturer cited in the [solicitation] must also be furnished."

Since Murdock based its offer on its own part number, that offer could not qualify for acceptance under the exact product portion of the "Products Offered" clause. Moreover, Murdock did not provide any of the documentation from Cummins required by the clause to establish the acceptability of its offered product.

Finally, the protester argues that the requirement that it submit either detailed drawings or seek an approval from Cummins is unfair and unduly restrictive of competition. It complains that such a scheme unreasonably favors Cummins as the manufacture of the engine of which the pump is a part for no good reason since it, like Cummins, will get the pump from the same source, FCD Corporation.

These arguments, all of which concern the terms of the solicitation's "Products Offered" clause and the omission by amendment of Murdock as an approved source, are untimely raised and will not be considered. Our Bid Protest Regulations require that matters such as these based on alleged solicitation improprieties be protested prior to the closing date for receipt of proposals. 4 CFR § 21.2(a)(1) (1989). Murdock did not protest to our office until after the award was made to Cummins.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel