



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Castoleum Corporation

File: B-236573

Date: December 13, 1989

DIGEST

Procuring agency properly rejected the protester's alternate item in a procurement involving a "Products Offered" clause where the protester refused to bear the costs of properly required qualification testing.

DECISION

Castoleum Corporation protests the award of a contract to Rust-Lick Products, a division of ITW Devcon Corp. under request for proposals (RFP) No. DLA400-89-R-0933, issued by the Defense General Supply Center, a field activity of the Defense Logistics Agency (DLA). Castoleum contends that its product, offered under the "Product Offered" clause of the RFP, is identical to the approved source item offered by Devcon and that DLA should have accepted Castoleum's lower-priced offer.

We deny the protest.

The RFP, issued as an unrestricted procurement, sought the supply of Rust-Lick 606, an aircraft engine corrosion preventative. Rust-Lick was specified as the required item because General Electric, the original equipment manufacturer for the engines, specified Rust-Lick in its maintenance procedures and the agency states that it lacked sufficient specifications or technical data to determine the acceptability of other products.

The RFP, however, did provide for the submission of alternate items. The "Products Offered" clause permitted firms to offer alternate items that were either identical to or physically, mechanically, electrically and functionally interchangeable with the Rust-Lick product. Offerors were required to furnish all of the necessary information and data to establish that the alternate product offered was equal to the Rust-Lick product and were warned that the

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failure to furnish information sufficient to establish the acceptability of the alternate product might preclude consideration of the offer. The clause also provided that:

". . . the government will make every reasonable effort to determine, prior to award, the acceptability of any products offered which are within the range of consideration. However, if such determination cannot be accomplished by the expected contract award date, the products may be considered technically unacceptable for this award."

DLA received eight offers in response to the RFP, seven of which offered an alternate item. Devcon offered its Rust-Lick 606 product while Castoleum offered to provide its Trizol 909, which Castoleum states is chemically identical to the Rust-Lick 606. Castoleum proposed price was approximately \$60,000 while Devcon's price was approximately \$70,000.

The alternate offers were submitted to DLA's engineering support activity (ESA) for evaluation. The ESA determined that approval of the alternative items would require lengthy and expensive testing that was not justified by the expected usage. On this basis, DLA rejected Castoleum's alternate offer, and this protest followed.^{1/}

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, when a contracting agency restricts a contract award to an approved source, it must give nonapproved sources a reasonable opportunity to qualify. See 10 U.S.C. § 2319(c) (1988); American Ball Screw, 66 Comp. Gen. 133 (1986), 86-2 CPD ¶ 664; Kitco, Inc., B-232363, Dec. 5, 1988, 88-2 CPD ¶ 559.

Castoleum argues that DLA's refusal to test its offered product deprived Castoleum of a reasonable opportunity to

^{1/} DLA, in its agency report, contends that Castoleum failed to provide sufficient information to establish that the offered alternate item was equal to the Rust-Lick product. However, the agency does not elaborate what other information was required from Castoleum or why this information could not have been obtained from the protester through discussions. In any case, as discussed below, the ultimate reason Castoleum's product was rejected is that it refused to pay for testing of its product.

qualify. The record shows that after the filing of the protest, the agency arranged with General Electric to test Castoleum's product at Castoleum's expense to ascertain that product's equivalency to Rust-Lick 606. However, Castoleum refused to pay the estimated \$5,000 for this qualification testing and contends that the agency should be required to bear the expense of qualifying alternate sources.

Under 10 U.S.C. § 2319 and its implementing regulations, potential offerors, in order to become qualified, generally bear the cost of testing and evaluation. See 10 U.S.C. § 2319(b)(3) (1988); Federal Acquisition Regulation (FAR) § 9.202(a)(1)(ii) (FAC 84-47). The law also provides that, under certain circumstances, an agency may bear the cost of qualification testing for small business concerns where the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize, within a reasonable period of time, the costs incurred by the agency, considering the duration and dollar value of anticipated future requirements. 10 U.S.C. § 2319(d)(1)(B); FAR § 9.204(a)(2).

The agency determined that the anticipated usage of the Rust-Lick product did not justify the expense of performing the qualification testing. Castoleum has not shown the agency's determination is unreasonable. Under the circumstances, we see no basis to conclude that DLA was required to bear the expense of testing Castoleum's product. Inasmuch as Castoleum refused to bear the expense of the necessary qualification testing, DLA acted reasonably in rejecting Castoleum's alternate offer and awarding a contract to Devcon, as the only approved source.

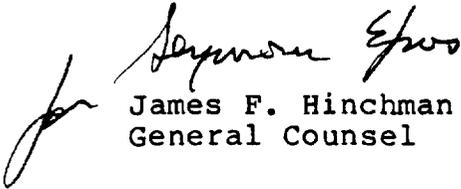
Castoleum also argues that since its offered product, Trizol 909, is chemically identical to the Rust-Lick, it is the "exact product" sought by the RFP and need not be tested.^{2/} We do not agree. The solicitation defines an "exact product" to be "the identical product cited in the AID [acquisition identification description] manufactured by the manufacturer cited in the AID or manufactured by a firm who manufactures the product for the manufacturer cited in the AID." Under this definition, Castoleum's product is not

^{2/} Castoleum has submitted the results of an infrared scan, performed by an independent chemical company, of its Trizol 909 and the Rust-Lick which the protester contends demonstrates that the two products are identical. The test report, however, only indicates that the two products are "similar."

the "exact product" sought by the RFP but an alternate item. In this regard, the record indicates that even if the Rust-Lick and Trizol were chemically similar, the Air Force and General Electric found that the two products could differ in the amount of buildup each leaves on engine parts. An increase in the amount of chemical buildup left on an engine would result in increased maintenance time and expense.

Based on the foregoing, we find that DLA acted reasonably in requiring alternate items to be tested in order to be qualified as approved sources and could reject the products of offerors who declined to pay for the testing.

The protest is denied.

James F. Hinchman
General Counsel