



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied-Signal, Inc.

File: B-239170; B-239921

Date: July 17, 1990

James W. Soroka, Esq., Allied-Signal, Inc., for the protester.
Dennis R. Regan, American Precision Gear Co., an interested party.
Regina Delarosa, Esq., and John D. Duffy, Esq., Defense Logistics Agency, for the agency.
Penny M. Ahearn, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation listing of competitor as an approved source, on the ground that approval was based on improper disclosure of protester's proprietary technical data, is untimely where protester had constructive notice of competitor's approval through announcement of prior award to competitor for same part in Commerce Business Daily more than 2 years before issuance of solicitation.

DECISION

Allied-Signal, Inc. protests the award of any contracts under request for proposals (RFP) No. DLA700-90-R-0235, and request for quotations (RFQ) No. DLA700-90-T-N192, issued by the Defense Logistics Agency (DLA) for quantities of a gear used aboard the P-3 aircraft. Allied-Signal contends that both solicitations improperly list American Precision Gear Company as an approved source for the part and requests that the solicitations be limited solely to its own part.

We dismiss the protest.

The RFP, issued on January 4, 1990, requested proposals to furnish output pinion spur gears, a component of the air conditioning compressor in the P-3 aircraft; the RFQ, issued on May 15, requested quotes for an additional quantity of the same gears. Both solicitations listed Allied-Signal and

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American Precision as approved manufacturers of the part. The RFP further notified offerors that specifications, standards, or drawings for the part were not available for furnishing by the government to prospective offerors. Allied-Signal protested the terms of the RFP to the agency prior to the March 21 closing date, and subsequently protested to our Office on April 3; Allied-Signal protested the terms of the RFQ to our Office on June 5, 1990.^{1/}

Allied-Signal argues that the agency's approval and listing of American Precision as an alternate source was improper. Allied-Signal states that its predecessor company, Garrett Corporation, originally developed the spur gear in the late 1950s at private expense; according to Allied-Signal, the present configuration of the part is based on a drawing prepared in 1961 by Garrett, also at private expense, and not subsequently released to anyone, either government or vendors, without a proprietary legend. Allied-Signal contends that in order to manufacture and inspect the gear, American Precision must have had unauthorized access to Allied-Signal's proprietary drawing and tooling. According to Allied-Signal, certain tolerances, dimensions, instructions, and tooling on its proprietary drawing could not have been developed by reverse engineering. Allied-Signal speculates that Allied-Signal's proprietary drawing was improperly disclosed by DLA or another government agency.

DLA reports that American Precision was approved by the agency as an alternate source for the part in August 1986, based on a review of American Precision's technical data package; according to the agency, the package contained all required technical data necessary to evaluate the alternate item, including a drawing developed by American Precision through reverse engineering and another drawing from another previously approved source. DLA maintains that American Precision was a properly approved source for the part and that no Allied-Signal proprietary data was released by the agency outside the government. The agency further argues that, in any case, the protest is untimely. According to the agency, Allied-Signal knew or should have known of the basis of its protest more than 2 years ago when, subsequent to the approval, award of a contract for the same part was made to American Precision on November 7, 1986. In that solicitation, American Precision, AeroCustoms, Inc., AiResearch Manufacturing Company, and Garrett (Allied-Signal's predecessor) were listed as approved

^{1/} Two offers were received under the RFP, Allied-Signal offering a price of \$282.59 each and American Precision a price of \$81.14 each.

sources for the part; the subsequent award to American Precision was synopsized in the Commerce Business Daily (CBD) on November 20, 1986.

We agree with the agency that Allied-Signal's protest of the approval of American Precision as an alternate source for the gear is untimely. Our Bid Protest Regulations require that protests be filed within 10 working days of when the protester knew or should have known of the basis for its protest, 4 C.F.R. § 21.2(a)(2) (1990); in this respect, publication in the CBD constitutes constructive notice of procurement actions. Dixie Air Parts Supply, Inc., B-230088, Apr. 11, 1988, 88-1 CPD ¶ 355. The record establishes, as explained above, that any disclosure of Allied-Signal proprietary information would have occurred prior to the listing of American Precision as an approved source under the earlier, 1986 procurement. Thus, when the award to American Precision for the same part was announced in the November 20, 1986 CBD, placing Allied-Signal on constructive notice that American Precision had been approved as an alternate source, Allied-Signal should have known of any alleged improper disclosure of its proprietary data at that time. Allied-Signal did not protest at that time, however, and its protest now, more than 3 years later, is untimely.

We are not persuaded by the protester's argument that each time a solicitation is issued with American Precision as an approved source, the agency commits a new and additional violation of Allied-Signal's proprietary rights. There is no allegation here that the agency used or disclosed in either the RFP or the RFQ Allied-Signal's proprietary data. See generally Ingersoll-Rand Co., B-236391, Dec. 5, 1989, 89-2 CPD ¶ 517. Indeed, the RFP clearly stated that no drawings were available from the agency. Again, any improper disclosure of Allied-Signal's proprietary data must have occurred prior to November 1986. Under these circumstances, we consider the protester to have waived any objection to the approval of American Precision by not protesting at the time of award on the earlier contract. See Del Mar Avionics--Request for Recon., B-231124.2, Feb. 9, 1989, 89-1 CPD ¶ 131.

Allied-Signal requests that, if we find its protest untimely, we consider it pursuant to the exception in our timeliness rules for protests that raise significant issues. 4 C.F.R. § 21.2(b). This exception is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest to the procurement community and involves a matter that has not

been considered on the merits in prior decisions. Dixie Air Parts Supply, Inc., B-230088, supra. Allied-Signal's protest does not fall within this narrow exception; we previously have considered numerous cases concerning the alleged improper disclosure of proprietary information in connection with a procurement. See, e.g., Ingersoll-Rand Co., B-236391, supra.

In any event, the record contains no evidence that Allied-Signal's proprietary data was disclosed by government officials. Although Allied-Signal suspects that a comparison of its drawing with American Precision's drawing may call into question American Precision's claim to have reverse engineered the part, we have previously recognized that similarity of details does not necessarily show that a drawing was derived by means other than reverse engineering. See Ingersoll-Rand Co., B-236391, supra. In any case, any similarity of detail would not demonstrate that any disclosure of Allied-Signal data was made by government personnel. To the extent that Allied-Signal's proprietary data may have been disclosed by another private party, or that Allied-Signal objects to the continuing alleged use of its proprietary data by American Precision, that is a matter between private parties not appropriate for consideration under our bid protest function. See Del Mar Avionics, 67 Comp. Gen 597 (1988), 88-2 CPD ¶ 180.

The protests are dismissed.



For
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