

S. Cooper
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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-242362

Date: April 9, 1991

James P. Rome, Esq., Rome & Associates Ltd., for the protester.
Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.
Sabina K. Cooper, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against alleged confusion in an item description in a request for quotations (RFQ) is denied where the record shows that the RFQ identified a National Stock Number (NSN) and two approved source part numbers for the item. The fact that another NSN identified the same item in no way prevented offerors from submitting a quote under the RFQ.
2. Where a protester supplements, in its comments on the agency report, a timely protest with new grounds that should have been raised at the time the protest was initially filed in our Office, those grounds are untimely where the protester knew or should have known the basis of its protest as of its initial filing.

DECISION

Advanced Seal Technology, Inc. (AST) protests the alleged confusion in the item description in request for quotations (RFQ) No. DLA700-91-T-2559, issued by the Defense Logistics Agency, Defense Construction Supply Center (DCSC), for a mechanical seal assembly used on centrifugal pumps in submarine seawater systems. AST argues that the item requested in the RFQ has appeared in other solicitations with a different National Stock Number (NSN) and that confusion exists as to what the solicitation is for and who the approved suppliers are.

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

The RFQ was issued as a small business, small purchase set-aside on October 23, 1990, for 22 seal assemblies (NSN 4320-00-121-6059) described as "Seal Assembly, Shaft, Spring Loaded. Fairbanks Morse Pump Corp. . . . P/N [part number] 99F1-1-2DWPC212, John Crane-Houdaille Inc. . . . P/N CF-395SP80395/XF5010151(316)." DCSC received three quotes by the November 13 closing date for receipt of quotes. AST did not submit a quote. DCSC has not yet issued a purchase order. AST submitted an agency-level protest by letter of November 7, and protested to our Office on December 14.

The record shows that the Naval Sea Systems Command (NAVSEA) informed DCSC in 1989 that the rubber-like diaphragms of the mechanical seals were to be manufactured of a different material than had been used previously. In March 1990, DCSC requested Crane, the approved source, to supply its new number for the part that incorporated the change in material. In October, prior to the issuance of this RFQ, DCSC realized that two NSNs were being used to designate the identical item, NSN 4320-00-128-9962 and NSN 4320-00-121-6059 (the NSN listed in the RFQ now at issue). DCSC initiated action to merge the NSNs and to ensure that the same approved manufacturers were listed for each NSN until the final NSN was determined. After the RFQ was issued, the Fairbanks part number, originally listed in the procurement item description (PID), was removed since DCSC realized that Fairbanks, the original equipment manufacturer of the pump in which the seal assembly is used, utilizes the Crane seal assembly already listed in the PID in its equipment; the Fairbanks part number therefore was simply a renumbering of the Crane part.

The record shows that the RFQ clearly stated what item was being procured by listing one NSN and the part numbers of two manufacturers in the item description, Crane and Fairbanks. The fact that two different NSNs, one used in a 1986 solicitation, NSN 4320-00-128-9962, and the one in the RFQ at issue, NSN 4320-00-121-6059, turned out to refer to the identical product, could not reasonably have prevented offerors from knowing what item was solicited in this procurement. The change in the Crane part number which resulted from the inclusion of new material required for a portion of the seal did not affect an offeror's ability to submit a quote for this item, since the approved source and the part number of the item to be procured were clearly identified.

In its report on AST's protest, DCSC advised our Office that AST was originally approved by DCSC's Directorate of Technical Operations as a source for a purchase order for seal assem-

blies (NSN 4300-00-128-9962) in July 1986. In November 1986, DCSC learned that NAVSEA, the agency with engineering cognizance for this item, had not delegated the authority to approve alternate offers for this NSN to DCSC. Since AST's part had not been properly approved by NAVSEA through its qualification testing procedures, DCSC withdrew AST's part from the approved source list. Before DCSC could withdraw the purchase order that had been issued to AST, AST delivered the improperly approved items. DCSC accepted, but then disposed of, the AST items.

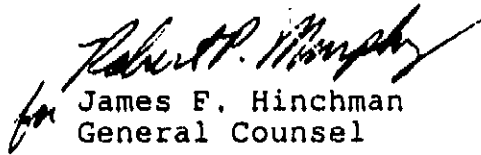
As of January 10, 1991, NAVSEA states that it had no record of approval of AST's alternate product for either of the two identical NSNs that correspond to Crane's part number called for in this RFQ, or any Standard Form DD1418 issued in 1989 approving AST for any NSN relevant to this RFQ. Since no AST alternate product for this NSN has been approved by NAVSEA, DCSC could not include AST's part number in the PID for this RFQ.

In its comments on the agency report, AST raised several new issues: that the withdrawal of DCSC's approval of its alternative product in 1986 was unreasonable in that DCSC has not provided documentation showing that NAVSEA is responsible for the approval of seal assemblies; that DCSC never told AST that approval for its product provided in 1986 was rescinded; that the item AST submitted at that time should have been evaluated for use in this procurement; and that DCSC's failure to answer AST's agency-level protest promptly prejudiced AST.

When a protester supplements a timely protest with new, independent grounds of protest, these new grounds must independently satisfy the timeliness requirements under our Bid Protest Regulations. Allied-Signal Aerospace Co., B-240938.2, Jan. 18, 1991, 91-1 CPD ¶ 58. Our Regulations require that protests involving other than solicitation improprieties be filed within 10 days after the protester is on notice of the basis for protest. 4 C.F.R. § 21.2(a)(2) (1990). With respect to the issues concerning the 1986 withdrawal of approval of AST's product, AST's arguments in essence constitute a challenge to the agency's failure to list AST as an approved source on the PID. Since the basis for this objection was evident from the face of the RFQ, AST should have raised the issue in the initial protest; it could not simply wait until the agency disclosed the specific reason for its decision not to list AST as an approved source before

it raised an objection to the agency's decision. Also, AST objects to the agency's failure to issue a decision in response to AST's November 7, 1990, agency-level protest before AST filed its protest at our Office on December 14. Since this issue was not raised until March 8, 1991, substantially more than 10 days after the protester was on notice of it, it is untimely.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel