

144808 McAuliffe



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aero Components Company of Arlington, Inc.

File: B-244407

Date: August 27, 1991

Jon C. Williams for the protester,
Robert L. Mercadante, Esq., Defense Industrial Supply Center,
Defense Logistics Agency, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest of agency's decision not to waive a first article testing requirement is denied where the protester has not furnished product to government for 7 years and agency records show that the protester has a poor quality history for similar products under contracts with agency since that time.

DECISION

Aero Components Company of Arlington, Inc. protests the rejection of its quote and the award of a contract to Electro-Methods, Inc. under request for quotations (RFQ) No. DLA500-91-Q-8900, issued by the Defense Industrial Supply Center, Defense Logistics Agency, for turbine spacers. The protester contends that the agency improperly failed to waive first article testing for Aero and that it should be awarded the contract since Aero, which conditioned its price on the waiver of first article testing, submitted the lowest quotation.

We deny the protest.

The RFQ was issued on February 13, 1991, and requested quotations for 150 turbine spacers for aircraft engines. The RFQ contained an agency quality assurance plan for first article testing and included the requirement, pursuant to Federal Acquisition Regulation (FAR) § 52.209-4, for first article approval and government testing. The contractor was required to submit three turbine spacers for first article approval testing by the Naval Aviation Depot, Jacksonville, Florida. Aero submitted the lowest-priced quotation, but conditioned its price on the agency's waiver of first article

testing since Aero's product had received first article approval under a prior contract. Aero did not submit alternate prices or delivery terms for the submission of first article test samples.

The protester's quotation was, essentially, a request for a waiver of the first article testing requirement. That request was forwarded to the agency's Directorate of Quality Assurance for a recommendation. The agency reports that in light of the "critical application of the item," the Directorate advised that "waiver of first article approval was not acceptable; that the last contract to Aero Components was [7] years ago; that on the previous contract, Aero Components failed the first article tests on the first submission; and that Aero Components has a poor quality history." The agency provides information regarding at least 10 of Aero's recent contracts that identifies numerous first article disapproval determinations and various product defects. The agency decided that first article testing would not be waived for the protester. Since Aero did not provide an alternate price for the required units that included the necessary testing, the protester's quotation was rejected. An award was made on May 10 to the firm that submitted the next low quotation, Electro-Methods. The agency reports that the first article testing requirement was not waived for any of the firms that submitted quotations, including the awardee. The protester filed its protest with our Office on June 10, challenging the agency's failure to waive first article testing for Aero. The protester seeks award on the basis of its low-priced quotation.

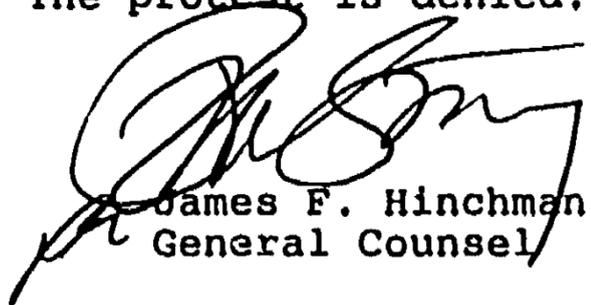
First article testing and approval ensures that the contractor can furnish a product that conforms to all contract requirements. FAR § 9.302. An agency decision to waive or not to waive first article testing for a particular contractor is subject to question only where it is shown to be unreasonable. Diemaster Tool, Inc., B-241239 et al., Jan. 30, 1991, 91-1 CPD ¶ 89. Because the waiver provision does not confer any right to a waiver, but is for the protection and benefit of the government, we have generally been more demanding in our assessment of challenges to the denial of a waiver, requiring a clear showing of an abuse of discretion. Engineered Air Sys., Inc., B-237214, Jan. 25, 1990, 90-1 CPD ¶ 107.

In our view, the agency's decision to deny waiver of first article testing for Aero was reasonable. The record shows that although Aero successfully passed first article testing under an earlier contract, that contract was awarded more than 7 years ago, testing approval was not granted upon Aero's initial first article submission and Aero has not manufactured the product for the government since that time. The record further shows that the agency has experienced numerous quality problems with other Aero products in recent years and under at

least eight contracts awarded to Aero since the time of its original approval, Aero has failed the government's first article tests upon the first submission of samples.

Given the critical characteristics of the turbine spacers (and the potential risk to the government in terms of aircrew safety and equipment damage or loss), and Aero's history of quality problems, which Aero does not challenge, we find reasonable the agency's desire to ensure that Aero can currently furnish a product that conforms to all contract requirements for acceptance. As such, we find no reason to question the propriety of the agency's decision not to waive the requirement for first article testing for Aero's turbine spacers. Further, since Aero conditioned its quotation upon the waiver of first article testing, we find that the agency properly awarded to the firm which quoted the lowest price with first article.

The protest is denied.



James F. Hinchman
General Counsel