



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

Decision

Matter of: Florida Ordnance Corporation
File: B-247363.4
Date: August 31, 1992

John P. Warren, Jr., Esq., for the protester,
Jeffrey I. Kessler, Esq., and Mike Lonsberry, Esq.,
Department of the Army, for the agency,
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Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

In a sealed bid procurement for tank track shoe pin assemblies, in which the solicitation required the pin assemblies to have been previously tested and approved for inclusion on the qualified products list prior to award, the agency reasonably decided not to further delay its procurement where the protester's pin assemblies were not qualified at the time of award, despite the agency's delay of more than 1 year in procuring the pin assemblies to provide the protester with an opportunity to get its product qualified and the agency needed the pin assemblies to continue its production line.

DECISION

Florida Ordnance Corporation (FOC) protests the rejection of its bid under invitation for bids (IFB) No. DAAC79-92-B-0022, issued by the Red River Army Depot (RRAD), Department of the Army, for pin assemblies for the T-156 tank track shoe assembly.

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

The IFB contemplates the award of a 12-month requirements contract for pin assemblies with bushings for delivery to RRAD to be used in rebuilding the T-156 track shoe.¹ The

¹The agency originally sought to procure the pin assemblies as one of a variety of tank track components under IFB No. DAAC79-91-B-0056, issued on March 19, 1991. After bid opening, FOC, the apparent low bidder for the pin

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T-156 track shoe is used on the Abrams Main Battle Tank. RRAD is currently the only facility rebuilding T-156 track shoes. In rebuilding the track, RRAD replaces the old pin assemblies with new ones. Because the pin assembly affects the tank's mobility, it is considered a critical item. Only sources that have obtained source approval from the U.S. Army Tank-Automotive Command (TACOM) are considered eligible to provide the assemblies.²

The IFB was issued on December 9, 1991, with a bid opening date of May 8, 1992. The solicitation provided that the pin assemblies must conform to MIL-T-11891B (ORD), and be previously tested and approved for inclusion on the applicable qualified products list (QPL). The IFB contained the standard "Qualifications Requirements" clause, as set forth in Federal Acquisition Regulation § 52.209-1, which provides notice that award is limited to products on a specified QPL. The clause also states that products must be qualified at the time of award whether or not the product is actually listed on the QPL.

Bids were received from FOC, Goodyear Tire & Rubber Company, and Varec N.V; FOC was the apparent low bidder. While Varec's and Goodyear's offered products were qualified,³ FOC's was not. FOC's product was currently undergoing qualification testing, but had not been qualified. After the agency notified FOC that its bid would be rejected as nonresponsive because it did not offer a qualified product, FOC protested to our Office. FOC withdrew its protest based upon a January 28 agreement with the agency that the agency

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assemblies, protested to our Office that it had provided T-156 track shoes, including the pin assemblies with bushings, under a prior contract with the agency and should be considered qualified to supply pin assemblies. The agency canceled the line item for the pin assemblies to consider the question of FOC's qualification, and FOC withdrew its protest.

²While RRAD is buying the pin assemblies, TACOM has responsibility within the Army for qualifying pin assemblies and bushings for inclusion on the qualified products list (QPL).

³Goodyear's product was listed on the QPL. Varec's product was qualified at the time the IFB was issued and was added to the QPL prior to award. Varec's qualification is the subject of a protest by Goodyear (B-247363.6) that will be the subject of a future decision.

B-247363.4

would allow FOC an additional 8 weeks to qualify its product.

On March 30, nearly 8 weeks from the date of the agency's agreement to provide FOC with additional time to qualify its product, RRAD was informed by TACOM that qualification of FOC's product would require at least another 4 weeks. In addition, RRAD had information that FOC was currently the subject of a criminal procurement fraud investigation by the Criminal Investigative Division, although no suspension or debarment proceedings were planned. Because RRAD needed the pin assemblies to continue production of rebuilt T-156 tank tracks and FOC's product could not become qualified within the agreed time period, the agency found FOC's bid to be nonresponsive and made award to Varec on April 13. This protest followed. FOC's product was subsequently qualified by the agency on April 28 and has been added to the QPL.

FOC protests that the agency had no reasonable basis for not waiting until FOC's pin assemblies had been qualified. Further, FOC contends that the rejection of the firm's bid for failure to satisfy the qualification requirements is actually a "pretext to eliminate FOC as a potential competitor." FOC also contends that the requirement that the pin assemblies be approved and qualified was unduly restrictive of competition.

As an initial matter, FOC's protest allegation that the qualification requirement was unduly restrictive is untimely. This contention concerns an alleged solicitation impropriety that must be protested prior to the bid opening, 4 C.F.R. § 21.2(a)(1) (1992). Since this protest allegation was first raised in FOC's comments on the agency's report on FOC's post-bid opening protest, it was not timely raised and will not be considered here.¹

In any case, a procuring agency may limit competition for the supply of parts if doing so is necessary, as here, to ensure the safe, dependable, and effective operation of

¹To the extent that FOC complains that it should not be required to undergo qualification testing for inclusion on the QPL because of its prior production of T-156 track shoes under a prior contract, this complaint is also untimely and will not be considered. As noted above, the agency canceled the first procurement for the pin assemblies to allow FOC the opportunity to qualify its product. FOC participated in the agency's qualification process without complaint for nearly a year. In fact, the protester withdrew its first protest of this IFB when the agency provided the protester additional time to complete qualification testing.

military equipment, Tura Machine Co., B-241246, Feb. 4, 1991, 91-1 CPD ¶ 114. Under 10 U.S.C. § 2319(c)(3) (1988), a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract if the offeror can demonstrate that its product meets or can meet the approval standards before the date for award. On the other hand, the agency is not required to delay a procurement in order to provide a potential offeror an opportunity to become approved. 10 U.S.C. § 2319(c)(5); Kitco, Inc., B-232363, Dec. 5, 1988, 88-2 CPD ¶ 559.

Here, the record shows that on June 11, 1991, FOC requested information from TACOM regarding the qualification procedures for the pin assembly and bushings. TACOM responded to FOC's request on July 2. TACOM also notified RRAD, on July 12, that the qualification procedures would take a minimum of 6 months. From October 1991 through March 1992, FOC submitted various samples of its bushing's rubber compound while attempting to pass the initial endurance testing.⁵ FOC did not submit a pin assembly and bushings for final qualification testing until March 20, 1992, after it had found a rubber compound that could pass the initial screening. Final qualification testing began March 23, and FOC's pin assemblies were approved as qualified by TACOM on April 28, a little more than 5 weeks after FOC had submitted a pin assembly and bushings for final qualification testing.

FOC does not contend that TACOM was dilatory in qualifying the firm's pin assemblies or that the qualification process itself was unreasonably long. Rather, FOC's complaint is that RRAD should have further delayed its procurement to allow FOC additional time to qualify.

We do not think that RRAD was required to further delay its procurement while FOC sought qualification of its pin assemblies. As noted above, RRAD had already given FOC an extension of 8 weeks to qualify its pin assemblies. RRAD states that when it decided to make award to Varec and not further delay the procurement, it had been informed by TACOM that FOC's qualification would take at least another 4 weeks. RRAD further states that the pin assemblies were urgently needed to support its production line for rebuilding T-156 track because the procurement of the pin assemblies had, at that point, been delayed for 1 year.⁶

⁵The screening tests are necessary to establish that the compound used will bond the rubber bushing to the metal pin.

⁶The agency states that the last production of rebuilt T-156 track shoes was in January 1992 and that further production
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Furthermore, as the agency notes, FOC was the subject of a criminal procurement fraud investigation that could affect the firm's responsibility and eligibility to receive award. Thus, even if the agency delayed its award of pin assemblies to await the qualification of FOC's products, the agency reasonably anticipated further delays while FOC's responsibility and eligibility to receive award were considered.

Under the circumstances, RRAD's refusal to delay the procurement while FOC completed the source approval was not unreasonable or improper. Rather, the record shows that the agency acted promptly on FOC's request for qualification of its pin assemblies and FOC's product was approved within a reasonable time period, albeit not early enough to allow FOC to be eligible for award under this solicitation. Since FOC's product was not qualified at the time of award and RRAD was not required to further delay its procurement while FOC sought qualification, RRAD properly rejected FOC's bid as nonresponsive. See T.G.L. Rubber Co., Ltd., B-206923, Sept. 20, 1982, 82-2 CPD ¶ 239.

Finally, there is no evidence in the record to support FOC's allegation that the rejection of its bid (because FOC's offered product was not qualified) was a pretext to eliminate FOC as a competitor. We will not attribute unfair or prejudicial motives to a contracting activity on the basis of unsupported allegations, inference, or supposition. See Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83. In any event, FOC's product was qualified, and FOC may compete for future awards. In this regard, the contract award for the pin assemblies is only for 12 months, and further requirements after 12 months will be competed.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel

⁶(...continued)
was suspended because of the unavailability of pin assemblies with bushings. The agency also states that while other rebuilding work (of other tank tracks) had been performed earlier than planned to keep the production line employed, an award in April 1992 was essential to keep the production line, and its employees, employed.

B-247363.4