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148354



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

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-250199

Date: January 5, 1993

James P. Rome, Esq., for the protester.
John P. Patkus, Esq., Defense Logistics Agency, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to provide reasonable opportunity for offeror to qualify its alternate product is denied where agency reasonably was unable to complete the requisite review before it was necessary to make an award because of backorders and increasing demand for the item.

DECISION

Advanced Seal Technology, Inc. (AST) protests the award of a contract to John Crane-Houdaille Inc. under request for quotations (RFQ) No. DLA500-92-Q-KN09, issued by the Defense Logistics Agency (DLA) for a quantity of mechanical seals used in centrifugal pumps, specified on an approved product basis.¹ AST contends that the agency's failure to provide a particular material code and its failure to complete evaluation of AST's alternate seal deprived the protester of a reasonable opportunity to compete under the solicitation.

We deny the protest.

BACKGROUND

DLA, through the Defense Industrial Supply Center (DISC), is the procuring agency for the seals which are the subject of this protest. The Naval Sea Systems Command (NAVSEA) is responsible for evaluation of alternate items. These evaluations are conducted in two stages. First, the alternate or "candidate" seal is subjected to a technical

¹The listed, approved original equipment manufacturer (OEM) for the solicited seal is Crane.

evaluation in which the candidate seal manufacturer's drawings are compared with the OEM's drawings including comparison of seal component configuration and materials. Second, once an item is approved technically, it undergoes an operational test. The operational test may be waived if the candidate item is sufficiently similar to a previously approved item produced by the applying manufacturer.

DLA issued the RFQ on May 13, 1992, with a return date of June 3, seeking quotes on a basic quantity of 47 seals and two alternate quantities of 100 and 250 seals, respectively, Crane Part Number (P/N) NSP-00144. The "Products Offered" clause of the RFQ provided that alternate item offerors must submit copies of drawings, specifications, or other data necessary to clearly describe the characteristics and features of the product offered. It also provided that the government would make every reasonable effort to determine acceptability prior to award, but that if it could not, proposed alternate products could be considered technically unacceptable for this procurement. Upon completion of the evaluation, the offeror was to be notified and, if the item was acceptable, it would be considered for future requirements.

Crane and three other firms responded to the RFQ, all quoting prices on the Crane P/N. On May 29, AST contacted DISC to request that the material code for the seal be clarified, since it was not listed in the RFQ. DISC advised AST to put its concern in writing so that it could be forwarded to the DISC Technical Operations Directorate for response. DISC extended the return date to provide AST an opportunity to submit a quote. AST telefaxed its requests on May 29, June 3, and a third occasion, but failed to properly address the requests. Telefax copies of the requests were received in the proper office on or about June 17 and forwarded to Technical Operations. On June 30, Technical Operations advised DISC of the proper material code, XF91161 (316), and noted that the seal used a cast iron mating ring. DISC advised AST of this material code on July 6. AST submitted a quote by the July 8 extended return date. AST offered its seal, P/N CPS 2375-2 at a price of \$250 per unit, and provided an "upgraded" materials description which included a nickel bound, tungsten carbide mating ring. By letter of July 10, AST submitted a technical data package (TDP) for its part, and requested approval based on the similarity of this seal to a seal recently reapproved by NAVSEA.²

²In June 1991, AST met with representatives of DISC and NAVSEA to discuss the agencies' failure to complete evaluations of its alternate seals. As a result of this

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On July 27, the TDP was forwarded to DISC Technical Operations, which, in turn, on July 29, forwarded the TDP to NAVSEA for evaluation. Because of NAVSEA budget constraints and an existence of a backlog of pending evaluations, evaluation of the seal was expected to take 6 months. Due to numerous backorders for this seal and increasing demands for the item, DLA determined that it could not delay the procurement for the term of the evaluation. As a result, on August 26, DLA issued Crane a purchase order for the seals at a price of \$287.55 per seal.

By letter of August 21, received by AST on August 26, DLA advised AST that a minimum of 180 days was necessary to complete review of its alternate seal and that the procurement could not be delayed. AST then filed this protest with our Office.

DISCUSSION

The Competition in Contracting Act of 1984 (CICA), requires that an agency obtain "full and open" competition in its procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (1988). When a contracting agency restricts a contract to an approved product, and uses a qualification requirement, it must give offerors proposing alternative products a reasonable opportunity to qualify. BWC Technologies, Inc., B-242734, May 16, 1991, 91-1 CPD ¶ 474; see Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2; 10 U.S.C. § 2319(b). This opportunity to qualify includes ensuring that an offeror is promptly informed as to whether qualification has been attained and, if not, promptly furnish specific information why qualification was not attained. Rotair Indus., 69 Comp. Gen. 684 (1990), 90-2 CPD ¶ 154; see Federal Acquisition Regulation § 9.202(a)(4). Failure to act, within a reasonable period of time, upon requests for approval as a source deprives an offeror of a reasonable chance to compete and is inconsistent with the CICA mandate that agencies obtain "full and open" competition through the use of competitive procedures. Rotair Indus., Inc., B-224332.2 et al., Mar. 3, 1987, 87-1 CPD ¶ 238.

AST contends that, as in BWC Technologies, Inc., supra, the government's delay in evaluating its seal violates the applicable procurement statutes and regulations governing

²(...continued)

meeting, AST agreed to redesign the bellows component of its seals, including the so-called "core 4," which originally were approved as alternate items by NAVSEA in 1988. Subsequently, three of the four seals were reapproved by NAVSEA, and the fourth is under review.

the qualification of new sources. AST also contends that by effectively thwarting AST's right to compete, the government has violated the CICA mandate for "full and open" competition. 10 U.S.C. § 2304(a)(1)(A). We disagree.

In BWC, the agency had a sample of the protester's alternate product for close to 2 years without testing it. We found that this was inconsistent with the statutory and regulatory requirements for prompt qualification procedures. In sustaining the protest, we recommended that the agency complete testing on the alternate products and that if the protester's or another offeror's products successfully passed the tests, then to award the contract to the low priced, technically acceptable offeror. AST's situation here is materially different than that in BWC.

While AST originally submitted a TDP for this seal in 1986, the TDP submitted for this procurement incorporated revisions to the seal bellows. Any past delay which may have occurred in the approval process is not relevant to the current evaluation under the revised specifications. AST submitted a TDP for its P/N CPS 2375-2 on or about July 10, 1992, and DISC forwarded it to NAVSEA 2-1/2 weeks later. DISC requested a priority review of the seal (60 days), and included AST's cover letter requesting approval based on similarity to an approved seal.³ According to a September 1992 NAVSEA memorandum, staff and resource limitations and a current backlog of work prevented it from commencing evaluation of AST's seal. The memorandum also stated that NAVSEA had exhausted its funds for outside contractor evaluation and "has not had the opportunity to evaluate any offers in the recent past." AST does not dispute DISC's assessment that, due to the number of back-orders for the seal, award could not be delayed further to await the evaluation. Thus, we find no basis for concluding that the government unreasonably delayed evaluation of AST's alternate seal.

AST also contends that the government treated it unequally in that NAVSEA approved three seals for an AST competitor when it allegedly was lacking funds to do so. The government acknowledges the approval of the competitor's

³Although a seal which meets NAVSEA criteria for similarity may be approved more quickly than one which does not, approval based upon similarity is not automatic. Further, "similarity" approval concerns only the operational test requirement. According to NAVSEA evaluation guidelines, prior to reaching the operational test, an alternate item's drawings and specifications must still be fully evaluated to establish its interchangeability with the OEM seal.

seals, but observes that during the same time frame, NAVSEA approved two of AST's seals as well. Thus, the record does not reflect that AST was subjected to unequal treatment.

We also do not agree that the time which elapsed while AST waited for identification of the material code (5 weeks), and the time DISC took to forward AST's technical package to NAVSEA (less than 3 weeks), constituted unreasonable delay in evaluating AST's alternate seal. The record shows that the delay regarding the material code was due primarily to AST's failure to include the proper recipient code in the address of its submissions to DISC. Further, it is not clear that the material code was crucial to AST's submission. According to DISC, the material code is inherent to the part number. DISC's contention is supported by the fact that one offeror submitted a quote in May which correctly identified the material code. In addition, even after receiving the material code, AST decided that it was erroneous, and elected to submit its TDP using "upgraded" materials.⁴

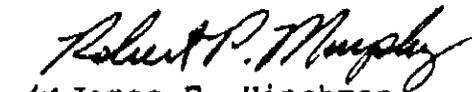
With regard to the time to forward the technical package to NAVSEA, DISC explains that the package is reviewed to ensure that the technical data enclosed is that which is cited in the cover letter. The assembly drawing and tabulation of constituent parts are compared with the detailed drawings of the component parts to ensure the TDP is complete. Then a request for engineering support is prepared, the TDP is photocopied, and a case file instituted. Further, DISC notes that it is responsible for processing alternate offers from all other mechanical seal manufacturers. Thus, it is unable to immediately forward TDP's upon receipt. We find DISC's explanation reasonable and cannot conclude that processing time of less than 3 weeks is unreasonable.

Moreover, AST was not unreasonably denied an opportunity to compete by these delays. DISC continually extended the return date for quotes in order to provide AST an opportunity to participate. Further, evaluation of AST's technical package was expected to take a minimum of 6 months. Thus, even if AST had the material code in May, submitted its TDP by the June 3 return date, and had its TDP forwarded to NAVSEA immediately, the technical evaluation

⁴In this regard, AST argues that use of the erroneous material code identified by DISC provided Craze with an unfair advantage and violates NAVSEA requirements. AST's contention is untimely. Protests of alleged improprieties in the solicitation, apparent prior to the closing date, must be filed before that date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1992).

would not have been complete until December. Based upon the backlog of orders for these mechanical seals, DISC issued the purchase order in August, well before the evaluation was expected to be completed.

The protest is denied.


for James F. Hinchman
General Counsel