



Comptroller General
of the United States

2331011

Washington, D.C. 20548

Decision

Matter of: Lambda Signatics, Inc.

File: B-257756

Date: November 7, 1994

Ray Lavi for the protester,
Stephen Stastny, Esq., Defense Logistics Agency, for the
agency.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protester's proposal based on unapproved alternate to the critical application item parts specified in the solicitation, which contains a products offered clause, was properly rejected where the agency could not delay the procurement because of critical supply shortages, while protester's item was undergoing evaluation.

DECISION

Lambda Signatics, Inc. protests the award of a contract to Parker Hannifin Corporation, Gull Electronic Systems Division under request for proposals (RFP) No. SPO440-94-R-1759, issued by the Defense General Supply Center, Defense Logistics Agency (DLA), for liquid transmitters. Lambda asserts that DLA failed to evaluate the alternate transmitter offered by Lambda in a fair and expeditious manner and thereby denied Lambda the opportunity to compete for the contract.

We deny the protest.

The RFP was issued on February 15, 1994, for 29 liquid transmitters, described as either Simmonds Precision Products Inc. part number EA993-3325 or Gull Inc. part number 011-005-002. These transmitters are located in a fuel tank of the C-141 aircraft and measure the amount of fuel in the tank. The transmitters are critical application

items and have an "EC1" essentiality code.¹ Because they are critical application items, the transmitters can only be purchased from a source that has had its transmitters evaluated and approved by the Engineering Support Activity (ESA) at Warner-Robbins Air Force Base.

The RFP included the "Products Offered" clause, which advised offerors that they could submit proposals for alternate items, that is, any transmitter other than the two listed in the RFP by part number, if the alternate items were identical to; or physically; mechanically; electrically and functionally interchangeable with the product cited. The products offered clause provided:

"If an alternate product is offered, offerors must furnish with their offer legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the product being offered. . . . [I]f available, the offeror should also furnish drawings and other data covering the design, material, etc., of the exact product cited in the [RFP] sufficient to enable the Government to determine that the offeror's product is equal to the product cited in the [RFP]."

The clause also advised offerors that:

"the Government will make every reasonable effort to determine, prior to award, the acceptability of any products offered which are within the range of consideration. However, if such determination cannot be accomplished by the expected contract award date, the products may be considered technically unacceptable for this award."

Two offerors, Gull and Lambda, submitted offers by the March 17 due date for proposals. Gull submitted an offer of \$2,196 each for the Gull part number requested by the solicitation. Lambda submitted an offer of \$1,895 each for an alternate item. In spite of the requirements set forth in the products offered clause, Lambda did not submit any

¹A critical application is one in which the item's failure could injure personnel or jeopardize a vital agency mission. Federal Acquisition Regulation (FAR) § 46.203(c). An essentiality code of EC1 indicates that if the part fails, the end item in which it has been installed will become inoperable. Thus, in this case, a defective transmitter could give an erroneous fuel reading which could result in loss of personnel and aircraft. Further, lack of a transmitter would result in grounding of the aircraft.

data that could be used to evaluate and approve its alternate part. As a result, on May 2, the contracting agency requested that Lambda submit technical data regarding its alternate item.² Although Lambda responded that it would send the data in a few days, the firm actually sent it on May 24, and DLA received it on June 1. Thereafter, on June 1, the contracting specialist requested the Directorate of Technical Operations to review the data to determine if it was sufficient for the ESA to evaluate Lambda's part for approval.

On June 3, the using activity requested that DLA increase the number of transmitters it was purchasing to avoid stock outages and the grounding of aircraft. The using activity reported that there were 49 transmitters on back order and that 5 aircraft had already been grounded because they lacked transmitters. In addition, there was a quarterly demand for 16 transmitters. On June 8, the Directorate of Technical Operations informed the contracting specialist that Lambda's alternate part could not be evaluated because Lambda did not submit technical data for either the Gull or Simmonds parts cited in the RFP. Also on June 8, the contracting officer determined that the acquisition could not be delayed pending the evaluation and approval of Lambda's transmitter because the government could not risk the possibility of being without the part since the aircraft is inoperable without it. In reaching this decision, the contracting officer considered that currently there were no transmitters in stock; back orders of 49; and a quarterly demand of 16. On June 9, the contracting officer notified Lambda that it was not in the government's best interest to delay the procurement pending evaluation of Lambda's transmitter. On June 17, DLA awarded the contract to Gull, and on June 29, Lambda filed its protest with our Office.³

²The agency initially contacted Lambda on April 26, but the person responsible for the offer was not in and DLA left a message for him to return the call. When he did not return the call, the agency called again on May 2.

³In its protest, Lambda complained that because it does not have access to Simmonds's or Gull's data, on June 21, it submitted additional information to the agency in lieu of such data to explain how it reverse engineered its transmitter. In its report, the agency asserts that it never received this information. While Lambda has provided documentation to show that Federal Express delivered an envelope from Lambda to the agency and asserts that the misdelivery and miscommunication within DLA resulted in the failure to evaluate Lambda's part, the fact is that the agency had already rejected Lambda's offer and made award to
(continued...)

The Competition in Contracting Act of 1994 (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). Accordingly, when a contracting agency restricts contract award to an approved product, and imposes a qualification requirement, it must give offerors proposing alternative non-approved items a reasonable opportunity to qualify their products. This includes providing offerors a prompt opportunity to demonstrate their qualifications. 10 U.S.C. § 2319b. Where a procuring agency is not itself responsible for the source approval evaluation, it must promptly provide a request for qualification to the agency responsible for source approval since the failure to do so deprives an offeror of a reasonable opportunity to compete and is inconsistent with the CICA mandate for full and open competition. Advanced Seal Technology, Inc., B-249855.2, Feb. 15, 1993, 93-1 CPD ¶ 137.

Lambda argues that DLA failed to follow applicable requirements for the fair and expeditious evaluation of Lambda's transmitter and thereby prematurely disqualified the firm from the competition. More specifically, according to Lambda, in an effort to qualify its alternate product prior to award, DLA should have forwarded Lambda's proposal to ESA once DLA ascertained that it was not within its authority or capability to approve the proposed item. Lambda asserts that DLA never informed Lambda of the ESA approval requirement, never requested Lambda to submit its technical data directly to ESA, and never contacted ESA itself. According to Lambda, this is because DLA never intended to qualify alternate sources. In any case, regarding the agency's claim that the need for the transmitters was urgent, Lambda argues that in the past its similar parts have been approved in 30 days based on its extensive experience and past performance.

While we agree that a potential offeror may not be denied the opportunity to submit, and have considered, an offer if the firm can reasonably demonstrate that its product meets or can meet the approval standard before the date for award, an agency generally is not required to delay a procurement in order to provide a potential offeror with an opportunity to become approved. ABA Indus., Inc., B-250186, Jan. 13, 1993, 93-1 CPD ¶ 38. Here, the contracting officer decided

³(...continued)

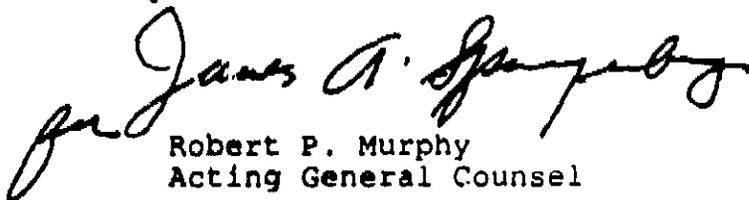
Gull prior to June 21. Accordingly, the additional information provided by Lambda regarding its transmitter is not relevant to the issue of whether the agency improperly failed to evaluate Lambda's part before it awarded the contract to Gull.

within a week of finally receiving Lambda's data that the contract needed to be awarded because the item was a critical part of a major aircraft system; several aircraft were already grounded due to a lack of the transmitters; and there were no transmitters in stock and 49 on back order. Under these circumstances, where DLA needed to make an award because its requirements were urgent, a factor that Lambda does not dispute, the agency was not required to delay the award while Lambda attempted to become approved. Texstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273.

Here, despite a specific warning in the solicitation that offerors of alternate parts were required to submit drawings; specifications; or other data describing their parts, Lambda did not submit any such information with its offer. Further, even after DLA called and requested that Lambda submit the information, Lambda failed to do so for 1 full month. Thus, Lambda significantly contributed to DLA's inability to have Lambda's alternate transmitter evaluated and approved before it was necessary to proceed to award.

While Lambda asserts that it should take only 30 days to have its product approved after submittal of data, ESA responds that it has a goal of approving parts in 90 days and we have no basis to question that it will take 90 days to approve Lambda's part. In any case, DLA was under no obligation to delay the procurement for this critically and urgently needed item to accept the risk that Lambda's part may not even be approved. See Texstar, Inc., supra.⁴

The protest is denied.


Robert P. Murphy
Acting General Counsel

⁴In its protest, Lambda also complained that DLA did not suspend performance of the contract while the protest was pending. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (1988 and Supp. V 1993), an agency is to suspend contract performance if it receives notice of a protest from our Office within 10 calendar days of the date of contract award. Here, the contract was awarded on June 17 and Lambda filed its protest on June 29. While we notified the agency of the protest the same day, since the agency was notified more than 10 calendar days after the protest was filed, the agency was not required to suspend performance. 31 U.S.C. § 3553(d)(1).