



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-258142

Date: December 12, 1994

James P. Rome, Esq., for the protester.
John P. Patkus, Esq., Defense Industrial Supply Center,
for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency rejection of protester's offer of alternate product was reasonable and consistent with solicitation warning that offerors proposing an alternate product which was used or approved by a different contracting activity should furnish data required to demonstrate that the product offered was equal to the product cited in the purchase item description because the procuring agency might not have access to the records of those other activities.

DECISION

Advanced Seal Technology, Inc. (AST) protests the rejection of its offer under request for quotations (RFQ) No. SPO500-94-T-N024, issued by the Defense Industrial Supply Center (DISC).

We deny the protest.

On May 9, 1994, DISC issued the solicitation for 40 mechanical seal assemblies, John Crane Inc. part number CF-SP-78134-1; Aurora Pump Co. part number 712-0707-492; or equivalent. The solicitation advised potential offerors of the applicability of DISC Form 2500A clause L018, Products Offered.

The Products Offered clause advised potential offerors that the government had found the two named manufacturers' products acceptable, and extended to offerors the option of offering those exact products or alternate products. The solicitation warned potential offerors of their obligation to furnish data demonstrating "design, materials, performance, function, interchangeability, inspection and/or

testing criteria and other characteristics of the offered product," as well as drawings and other data sufficient to enable the government to determine that the offered product was equal to the product cited in the purchase item description. The clause provided further:

" . . . If the product was furnished or evaluated and approved by a contracting activity different from the one issuing this solicitation, then so indicate in the space provided. However, in this case, offerors are advised that this contracting activity may not have access to records of another activity or other information sufficient to reasonably determine the offered product's acceptability. Therefore, the information requested [above] should be furnished with the offer."

AST responded to the RFQ on May 16, offering its part number CPS-787-5; AST advised the agency that the Naval Sea Systems Command (NAVSEA) had approved AST as a source for the seal in August 1987. AST furnished no further information to demonstrate the equivalence of its product to those listed in the purchase item description.

DISC had previously asked NAVSEA, on September 29, 1993, to confirm AST's assertion that it had already obtained approval of its alternate product. By letter dated May 18, 1994, NAVSEA advised DISC that its files were inadequate to confirm similarity of the AST part and that AST should resubmit its technical data package for review and approval. In a telephone conversation of May 24, DISC personnel asked AST to furnish the technical data required by the Products Offered clause, but AST asserted its belief that it had already submitted sufficient data for the agency to grant approval. By letter dated August 5, DISC formally advised the protester that its offer was rejected and that AST would have to provide a technical data package for review before its product could be approved. This protest followed.

Even if its submissions to NAVSEA were inadequate to demonstrate the acceptability of its product, AST argues that NAVSEA did not meet its obligation to promptly notify AST of the failure to qualify its product. AST contends that DISC also delayed unreasonably in notifying the protester of NAVSEA's request for resubmission of the technical data package. The protester further asserts that there is no basis for requiring an approved source to resubmit its supporting data, simply because the agency is unable to confirm the prior approval, and that it is unreasonable to require a contractor to go through the approval process a second time where an agency is unable to maintain its records properly.

While a contracting agency may restrict competition to previously approved sources, it must extend to other sources an opportunity to qualify their products; the obligation to demonstrate the acceptability of an alternate product remains with the offeror. Marine Elec. Sys., B-253630, Sept. 15, 1993, 93-2 CPD ¶ 175. The Products Offered clause here specifically advised offerors that regardless of approvals granted by other activities such as NAVSEA, technical data packages sufficient to support approval should be submitted in the event records at those activities were inadequate to demonstrate the alternate product's acceptability. Approval of an alternate product by another agency does not, by itself, demonstrate that the rejection of that product by DISC was improper. See Fantasy Lane, Inc., B-254072.3, June 23, 1994, 94-1 CPD ¶ 377; Rotair Indus., Inc., B-219994, Dec. 18, 1985, 85-2 CPD ¶ 683.


The record shows that DISC received NAVSEA's response 2 days after AST submitted its offer. While AST denies that DISC told it of NAVSEA's response until July, AST admits that on May 24, it received a request from DISC to submit the technical data required by the Products Offered clause, to support its request for approval. AST states that it advised the agency that it had previously submitted such data in 1992; AST's written correspondence, a letter of June 16, appears only to restate AST's position that approval had already been granted. Regardless of the precise contents of the May 24 telephone conversation, the record is clear that despite the warning contained in the Products Offered clause, and the agency's advice that it needed further data, AST expressly chose to rely on the material previously submitted.

The record provides no basis to conclude that the rejection of AST's offer resulted from the agency's unreasonable delay in advising the protester of the need to submit further data. By declining to furnish the data required by the Products Offered clause, AST failed to fulfill its obligation to demonstrate the acceptability of the offered product; the rejection of AST's offer was consistent with the warning in the Products Offered clause regarding reliance upon approvals granted by other agencies. To the extent that AST believes that the agency should suffer the consequences of NAVSEA's failure to maintain its records, its objections to the express terms of the solicitation clause are untimely. 4 C.F.R. § 21.2(a)(1) (1994).

Nor do we find the agency unreasonably declined to find that AST had already been approved as a source. NAVSEA's May 18 letter relates that in 1987, the Navy activity had recommended a change in the purchase item description, to discontinue use of a ceramic stationary ring in favor of a comparable seal with a tungsten carbide ring. In making

this recommendation, Navy personnel evidently suggested that the AST ring was a "suitable replacement." There is no evidence that AST was identified as a qualified source once the purchase description was revised, however, and AST has produced no documentary evidence that it has been ever considered a qualified supplier of the seal.

The protest is denied.

for 
Robert P. Murphy
General Counsel