



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Magnetic Design Labs, Inc.

File: B-259282

Date: March 20, 1995

Judith Kazem for the protester.  
Benjamin G. Perkins, Esq., and Stephen Stastny, Esq.,  
Defense Logistics Agency, for the agency.  
David A. Ashen, Esq., and John M. Melody, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Protest that agency deprived protester of an opportunity to compete by unreasonably delaying approval of protester as a source for a source controlled part is denied where the record does not evidence any unreasonable delay on the part of the agency.

### DECISION

Magnetic Design Labs, Inc. (MDL) protests any award under request for proposals (RFP) No. SPO440-94-R-3049, issued by the Defense Logistics Agency, Defense General Supply Center (DGSC), for linear transducers. MDL alleges that DGSC unreasonably delayed approval of the firm as a source for the part being acquired.

We deny the protest.

The solicitation, issued on August 12, 1994, advised offerors that the transducer was a source controlled item, to be manufactured in accordance with revision E3 of Sikorsky drawing No. (78286)70400-22850, and listed two approved sources (United Technologies and Betatronix Inc.). Pursuant to the RFP's "Products Offered" clause, MDL

The linear transducer being procured is used in Navy Hawk helicopters--manufactured by United Technologies Sikorsky Aircraft--deployed on ships at sea to assist in the folding of the helicopter's rotary blades to permit storage in the limited space available in hangers on board ship. Specifically, the transducer informs the helicopter's computer when the blades are in the correct position for fold.

submitted an offer for its unapproved part by the September 12 closing date.

As noted in its offer, MDL had sought approval as an alternate source for a prior procurement (RFP No. SPO440-94-R-1086) for the same item, manufactured to the same drawing revision (E3), in a source approval request submitted to the agency on March 7, 1994. Although MDL submitted the low prices under that RFP, the agency had determined that, due to the critical supply position at that time and the time required for source approval, award could not be delayed until completion of the evaluation. The agency therefore awarded a contract for that requirement to Betatronix.

On October 24, the agency amended the current RFP: (1) to require manufacture of the transducers in accordance with the latest version (revision G, dated April 18, 1994) of Sikorsky drawing No. 70400-22850; (2) to delete the solicitation's Products Offered clause; and (3) to establish a new closing date of November 23. Upon learning of the amendment, MDL filed this protest with our Office. MDL generally argues that DGSC has unreasonably delayed approval of the firm as a source for the transducers.

When a contracting agency restricts contract award to an approved product, and imposes a qualification requirement, it must give unapproved sources a reasonable opportunity to qualify. 10 U.S.C. § 2319 (1988); Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2; Advanced Seal Technology, Inc., B-249885.2, Feb. 15, 1993, 93-1 CPD ¶ 137. Implicit in the requirement that a potential offeror be afforded a reasonable opportunity to demonstrate that its product meets or can meet source approval standards prior to award is an obligation to conduct the review in a reasonably prompt manner. See Pacific Sky Supply, Inc., 66 Comp. Gen. 370 (1987), 87-1 CPD ¶ 358; ABA Indus., Inc., B-250186, Jan. 13, 1993, 93-1 CPD ¶ 38.

Under the circumstances here, it is clear that the agency has not unreasonably delayed approval of MDL. While the approval process was initiated on March 7, 1994, it was based on the now superseded E3 drawing revision. DGSC reports that revision G, a copy of which was obtained by the agency only on November 30, makes significant changes to the Sikorsky drawing which improve the reliability and life expectancy of the transducer. Therefore, according to the agency, only data offered for the revision G transducer can be evaluated and serve as the basis for approval of an offeror as a source for the transducer. The agency states that, while it has made arrangements with the Naval Air Systems Command (NAVAIR) to evaluate any source approval requests, evaluation and subsequent testing by NAVAIR will require 330 to 570 days. (Although DGSC states that a

potential offeror can also obtain approval directly from Sikorsky, MDL claims that Sikorsky refused its request for evaluation when contacted in late December. In any case, the agency reports that, according to Sikorsky, the Sikorsky approval process, although faster, still would take between 240 and 360 days.)<sup>2</sup>

DGSC reports that it is not feasible to delay award until MDL's approval is complete, since it is in a critical supply position, with the number of transducers on order (462) being considerably in excess of the quantity on hand (120). Further, notwithstanding expected future deliveries under two existing contracts, the overall supply position is expected to deteriorate further. However, the agency has assured MDL in writing that it will "expeditiously forward to the Navy data you submit[,] . . . urge that your submittal receive expeditious evaluation," and amend the solicitation so as "to only order the minimum quantity of linear transducers needed to satisfy the Government's requirements during the estimated evaluation period and production leadtime for the next acquisition."

In light of the significant changes made by drawing revision G (unrefuted by MDL), and the time required for evaluating a request for approval as a source for the revision G transducer (also unrefuted by MDL), it does not appear that source approval could have been obtained by MDL in time to avoid delaying the award, even had the agency acted earlier to obtain and furnish to MDL a copy of the April 1994 revision G. In this regard, although potential offerors may not be denied an opportunity to submit and have considered an offer if the offeror can demonstrate that its product meets or can meet the approval standards before the date for award, an agency generally is not required to delay a procurement in order to provide a potential offeror an

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<sup>2</sup>While MDL states that Sikorsky also refused to furnish it with the current specifications, DGSC advises that it has furnished MDL with both revision G and the current specifications.

opportunity to become approved. See ABA Indus., Inc., supra; Fiber Materials, Inc., B-246587, Mar. 18, 1992, 92-1 CPD ¶ 288. In these circumstances, therefore, there was no unreasonable delay on the part of the agency which served to deprive MDL of an opportunity for award.

The protest is denied.

\s\ Paul Lieberman  
for Robert P. Murphy  
General Counsel