



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: BF Goodrich Aerospace

File: B-261561; B-261777; B-261898; B-261899; B-262018

Date: September 18, 1995

Albert C. Ruehmann III, Esq., for the protester.

Robert S. Karpinski, Esq., and Harry D. Boonin, Esq., Department of the Navy, for the agency.

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DIGEST

Under solicitations for spare parts subject to source approval, contracting agency properly provided an alternative method of source approval by way of a licensing agreement with the original equipment manufacturer of the spare parts at issue for such things as certification, review, and approval, where the contracting agency is unable to assume these responsibilities and where the licensing agreement provision will allow for full and open competition.

DECISION

BF Goodrich Aerospace (BFG) protests the terms of request for proposal (RFP) Nos. N00383-94-R-0401, N00383-95-R-D364, N00383-95-R-D365, N00383-95-R-D366, and N00383-94-R-D260, issued by the Department of the Navy's Naval Aviation Supply Office (ASO) for various components of the landing gear assembly used on the Navy's F/A-18 aircraft.¹ BFG objects to the solicitations' alternative source approval arrangement whereby successful offerors must have an agreement with McDonnell Douglas Aerospace, the original equipment manufacturer and design control agent of these parts, for certification, review, and approval of the parts prior to award.

We deny the protests.

¹These parts are a restrictor support, an adapter assembly, a piston assembly, a spur gear, and a torque arm assembly, respectively.

These flight-critical spare parts are subject to source approval pursuant to 10 U.S.C. § 2319 (1994). To obtain source approval from ASO, a contractor must submit documentation to demonstrate its capability to manufacture the required parts. The Navy reviews the data to determine, among other things, whether the new source is introducing any changes, and whether the parts will be as reliable and durable as those provided by the original equipment manufacturer, the only currently approved source for these parts.

Until recently, ASO had two sources for these parts—McDonnell Douglas and BFG. Also until recently, BFG supplied these parts to McDonnell Douglas for use on McDonnell Douglas's Navy aircraft production contracts. As McDonnell Douglas's supplier, the firm received copies of all updates to the technical data and was able to propose engineering changes, waivers and deviations. Under these circumstances, ASO was able to use BFG as an alternate source for these parts.

The Navy's review of these solicitation requirements revealed a number of impediments to approving new sources and retaining approval of existing sources for these parts. First, the Navy did not possess all of the necessary data for the manufacture of these items and thus could not provide it to prospective offerors. The Navy had also been unable to obtain timely updates to the drawings it did possess and thus was unable to determine whether the data packages utilized by prospective offerors were current. Second, BFG no longer receives technical and data updates and other support from McDonnell Douglas because its production contract has expired, and McDonnell Douglas has contracted with other suppliers. Third, the data is subject to frequent updates due to the instability of the F/A-18's landing gear design. Fourth, the Navy was not in a position to evaluate the impact of various nonconformances documented as waivers, deviations and/or Material Review Board (MRB)² actions as they occur in manufacture.

The Navy states that when it realized it could not assume the quality assurance responsibilities that had been previously performed by McDonnell Douglas, its only alternative was to procure these parts on a sole-source basis from McDonnell Douglas.³ However, McDonnell Douglas agreed to expand the source base by

²The MRB is the formal contractor-government board established for the purpose of reviewing, evaluating and disposing of specific nonconforming supplies or services, and for assuring the initiation and accomplishment of corrective action to preclude recurrence.

³If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the government cannot undertake or eliminate, consideration of the new source is precluded. Defense Federal Acquisition Regulation Supplement, Appendix E, ¶ E-303.4(c)(5)(ii).

offering licensing agreements which provide for the services necessary to ensure that the product delivered meets the same reliability and durability as the items previously provided. The Navy agreed to approve alternate sources if McDonnell Douglas would provide engineering support, MRB support, manufacturing data and other support and guidance to firms that qualify pursuant to ASO's source approval procedures.

At an August conference for potential sources of the parts, attended by BFG, ASO presented the qualification requirements that would be incorporated into these solicitations. At this meeting, McDonnell Douglas announced that it was "getting out of the landing gear business."

These solicitations here were subsequently issued or amended to include the qualification requirements. Offerors were required to demonstrate, by the time of contract award, a bilateral agreement with McDonnell Douglas which would provide for (1) McDonnell Douglas certification that the offeror possessed complete technical data representing the latest configuration, and utilized such data in manufacture; (2) McDonnell Douglas review, disposition and certification of all MRB actions, requests for waivers and deviations, and requests for acceptance of material nonconformities; (3) McDonnell Douglas review and approval of process/operation sheets; and (4) McDonnell Douglas participation, performance, review and approval of first article inspection. Any offeror not having such a bilateral agreement with McDonnell Douglas, but desiring to seek source approval, was required to submit data meeting all of the requirements of ASO's source approval brochure.⁴ BFG argues that it does not need to be licensed by McDonnell Douglas as it has ready access to the drawings in question.

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; 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. This opportunity typically takes the form of the source approval process described above, wherein offerors submit technical data packages for agency approval. However, because the Navy does not physically possess much of the

⁴The Navy concedes that, due to the urgency of these requirements, there is insufficient time for offerors to complete the source approval process prior to award.

necessary data for source approval,⁵ it provided offerors the opportunity to compete by way of the licensing agreement with McDonnell Douglas.

In its comments, BFG does not dispute the Navy's contention that it is no longer provided updates from McDonnell Douglas because its production contract has expired, or that there may have been significant changes in the data since the expiration of that contract. Instead, BFG argues that McDonnell Douglas's processing and manufacturing know-how is not exclusive, and that there are many ways to manufacture these parts. This argument overlooks the fact that processing and manufacturing procedures, different though they may be, must all result in a spare part that conforms to the current design controlled by McDonnell Douglas. Because an offeror has the burden of demonstrating its qualification and the acceptability of alternate products, Sterling Mach. Co., Inc., B-246467, Mar. 2, 1992, 92-1 CPD ¶ 253, and the record is clear that McDonnell Douglas is in the best position to gauge that acceptability, we do not believe that the alternative licensing arrangement with McDonnell Douglas is improper.⁶

As a final matter, we note that Congress has long been concerned with the extent of competition for parts such as these. See, e.g., Defense Procurement: Acquiring Technical Data for Spare Parts Procurement, GAO/NSIAD-91-313, Sept. 1991; Spare Parts Procurement: Contractor Qualification Requirements, GAO/NSIAD-90-138, Apr. 1990; Procurement: Limited Data on DOD's Parts Breakout Program, GAO/NSIAD-87-16BR, Oct. 1986. Although, on this record, we conclude that there is nothing inherently improper in the Navy's arrangement with McDonnell Douglas to permit that company to assist the Navy in approving new sources for these parts, the Navy's reliance on the original equipment manufacturer will not absolve the Navy of its ultimate responsibility to ensure that potential offerors are receiving a fair opportunity to compete for the opportunity to manufacture these parts. In the

⁵The Navy states that it has the rights to the data available in the data repository but, contrary to BFG's assertion, it does not physically possess all of the necessary data for the manufacture of these parts.

⁶While BFG also argues that the Navy has not properly analyzed the potential impact of McDonnell Douglas's future return into the market, in light of McDonnell Douglas's express statement that it is "getting out of the landing gear business," and the fact that it has not submitted a proposal on any ASO procurements for landing gear components, we see no reason for the Navy to further analyze the situation.

event this approach does not provide a meaningful opportunity for offerors to gain timely approval to produce such parts, the Navy's approach may not withstand future scrutiny.

The protests are denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel