



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Starwin Industries, Inc.

**File:** B-401576; B-401576.2; B-401724

**Date:** October 1, 2009

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Barbara A. Duncombe, Esq., Taft Stettinius & Hollister, LLP, for the protester.  
Katherine D. Sweat, Esq., Defense Logistics Agency, for the agency.  
Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protests that two solicitations for radomes, which limit competition to vendors that are eligible for waiver of first article testing, unduly restrict competition are denied, where the agency has reasonably demonstrated that waiver is necessary to fulfill its urgent requirement for radomes; protester was not denied a fair opportunity to compete, where protester's radomes failed testing provided by the agency and protester is not eligible for waiver.

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### DECISION

Starwin Industries, Inc. of Dayton, Ohio, protests the terms of request for quotations (RFQ) Nos. SPM7M9-09-Q-1300 (RFQ-1300) and SPM7M9-09-Q-1468 (RFQ-1468), issued by the Defense Supply Center Columbus (DSCC) for radomes.<sup>1</sup> Starwin contends that the inclusion of a provision that limits the competition to vendors who are eligible for waiver of first article testing (FAT) requirements is unduly restrictive.

We deny the protests.

Radomes are structural, weatherproof enclosures that protect and conceal the antenna assemblies of radar sets on aircraft from the environment and from public view. At issue in these protests is the procurement of AFT (i.e., rear) transmit

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<sup>1</sup> Starwin also protested the terms of RFQ No. SPM7M9-09-Q-1386 for radomes. However, that solicitation was cancelled due to "administrative inconsistencies" and was reissued as RFQ-1468.

radomes (National Stock Number (NSN) 5985-01-185-7706)<sup>2</sup> and forward transmit radomes (NSN 5985-01-349-9183),<sup>3</sup> both of which are components of a “Raytheon ALQ-184 Electronic Attack Pod.” The pod fits over the transmit antenna on an aircraft and uses radio frequency to jam or deceive enemy radars and missiles so that the aircraft can travel undetected; the radomes help direct the radio frequency. The radomes are “[a]viation critical safety items” because if they fail to perform correctly, aircraft may be detected and shot down, resulting in death or serious bodily injury. Contracting Officer’s Statement (B-401576) at 3; Contracting Officer’s Statement (B-401724) at 3.

Historically, the agency has procured AFT and forward transmit radomes through separate solicitations, issued at different times and for different quantities. The radomes are not issued to the military customer together, and they are classified as “XB3,” which means they are throwaway items replaced individually as needed—there is no need to replace all radomes in the pod when replacing one radome. Contracting Officer’s Statement (B-401576) at 3; Contracting Officer’s Statement (B-401724) at 3. Because they are aviation critical safety items, the radomes have historically been purchased only from approved sources.

In 1995, DSCC designated Starwin as an approved source for AFT and forward transmit radomes. Starwin provided these radomes under indefinite-delivery purchase orders until early 2007, when the use of Starwin’s radomes was suspended. Use was suspended after the Air Force users in the field issued Quality Deficiency Reports (QDRs) that identified failures in Starwin’s radomes due to peeling paint and delamination. The Air Force determined that none of Starwin’s ALQ-184 radomes had been tested by the Air Force, and that Starwin had not been properly approved as a source. DSCC conducted an internal investigation and discovered that a former DSCC employee had approved Starwin as a source, but there was no documentation supporting this approval. Specifically, there was no evidence or documentation that Starwin’s radomes had been qualified or tested and, although Starwin asserted that limited acceptance testing had been performed, it could provide no record of the test results. Contracting Officer’s Statement (B-401576) at 3-4; Contracting Officer’s Statement (B-401724) at 3-4.

On May 4, 2007, DSCC informed Starwin that it was being removed as an approved source for the AFT and forward transmit radomes because of quality problems and the lack of documentation showing that Starwin had been properly qualified as an approved source. DSCC issued Starwin a stop work order for all outstanding purchase orders for the AFT and forward transmit radomes. Contracting Officer’s Statement (B-401576) at 4; Contracting Officer’s Statement (B-401724) at 4.

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<sup>2</sup> The AFT transmit radomes are the subject of RFQ-1300.

<sup>3</sup> The forward transmit radomes are the subject of RFQ-1468.

In June 2007, DCSS decided to eliminate the qualification requirement for pre-approval and to enforce the specification via FAT. Id. Thereafter, the Air Force hired, and paid for, an independent company to test Starwin's radomes as well as the radomes of the original equipment manufacturer, Omohundro Company, in accordance with FAT requirements. The testing of Starwin's and Omohundro's radomes together was intended to reduce the chance of arbitrary rejection of potentially useful radomes; as a further check, some of the testing was performed in the presence of Starwin's president. The testing, which took place from December 2007 through June 2008, included electrical and performance testing that has not changed since the ALQ-184 was fielded in 1989.<sup>4</sup> Contracting Officer's Statement (B-401576) at 4-5; Contracting Officer's Statement (B-401724) at 4-5.

Starwin's AFT and forward transmit radomes failed the FAT.<sup>5</sup> Specifically, they failed the high power electrical testing because the radomes' interior and exterior paint blistered from excessive heat. The test report concluded that the damage was "cumulative (*i.e.*, each incident of sustained high-power emission would damage the radome more than all previous incidences combined) and destructive (*i.e.*, the radome would eventually and prematurely be rendered incapable of protecting ALQ-184 components and assemblies beneath it from the environment)." Contracting Officer's Statement (B-401576) at 4-5; Contracting Officer's Statement (B-401724) at 5; Agency Report (B-401576), Tab 15(b), Failure Analysis Test Report, at 2. The test report was provided to Starwin.

On June 24, 2009, the agency issued RFQ-1300 for 65 AFT transmit radomes to be purchased under a fixed-price contract valued at \$84,500. One month later, on July 29, the agency issued RFQ-1468 for 50 forward transmit radomes, also to be purchased under a fixed-price contract valued at \$41,500. Both solicitations included Federal Acquisition Regulation (FAR) § 52.209-9015, which provides:

(a) The technical specifications for this item indicate that first article testing is required. However, in view of the small dollars involved in this acquisition and the increase in delivery time and considerable cost to the Government required to perform and/or process first article testing, this procurement shall be limited to consideration of offers for items produced by the sources identified below (except as specified in

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<sup>4</sup> Starwin asserts in its protests that the testing changed "on or about October 2007," Protest (B-401576) at 7; Protest (B-401724) at 6, but the agency denies this and the record does not support Starwin's assertion.

<sup>5</sup> Omohundro's radomes passed the FAT.

paragraph (b)), which are currently eligible for waiver of first article testing requirements<sup>6</sup>. . . .

(b) At the Government's discretion, offers for items produced by sources other than those identified above may be considered for award, if supporting documentation is provided with the offer in accordance with [Defense Logistics Acquisition Directive (DLAD) §] 52.209-9019. . . .

RFQ-1300 at 9; RFQ-1468 at 10. DLAD § 52.209-9019 provides that the government may waive the FAT requirement if certain criteria are met, including that the vendor has "no adverse quality history for the material manufactured in the last three (3) years." Starwin is not eligible for FAT waiver because it received the above-noted QDRs within the last 3 years.

Starwin protested the terms of both solicitations, contending that limiting sources to only those that are eligible for FAT waiver unduly restricts competition. Starwin argues that, because only Omohundro is currently eligible for FAT waiver, the RFQs in effect result in two sole-source awards without the appropriate justification. Starwin also complains that it was not provided a fair opportunity to qualify its radomes.

A contracting agency's responsibility for determining its actual needs includes determining the type and amount of testing necessary to ensure product compliance with specifications. Input/Output Tech., Inc., B-280585, B-280585.2, Oct. 21, 1998, 98-2 CPD ¶ 131 at 5. In this regard, an agency may properly restrict award to a source qualifying for FAT waiver when such waiver is essential to meet the required delivery schedule or where there is a critical need for certain supplies. See Honeycomb Co. of Am., B-225685, June 8, 1987, 87-1 CPD ¶ 579 at 5. Our review of an agency's decision to waive, or not waive, FAT requirements for a particular vendor is limited to determining whether the agency's decision was reasonable. Input/Output Tech., Inc., *supra*.

Based on the record here, we find that the agency has reasonably justified the need for FAT waiver in these procurements. As DSCC explained, the radomes are "[a]eronautical critical safety items" for which the military has an "urgent outstanding need." Contracting Officer's Statement (B-401576) at 6; Contracting Officer's Statement (B-401724) at 7. Simply put, when radomes are not available, aircraft are grounded. DSCC has not had any AFT or forward transmit radomes in stock for more than 2 years, in large part due to Starwin's paint and delamination failures. The agency had to suspend orders from Starwin in 2007, could not use any

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<sup>6</sup> Omohundro was the only firm listed as a source approved for FAT waiver.

of Starwin's radomes that were in stock because of the failures, and backorders continued to accumulate while both Starwin's and Omohundro's radomes were being tested in 2007 and 2008. In addition to the backlog, there is an ongoing and recurring need for radomes that also must be filled.<sup>7</sup> Contracting Officer's Statement (B-401576) at 6; Contracting Officer's Statement (B-401724) at 7.

As the agency explains, for a non-waived source to fill the requirements, it would take 400 to 450 days to fill the requirements, including the time for FAT, while the production lead time for AFT transmit radomes is only 150 days and the production lead time for forward transmit radomes is only 210 days. By restricting the RFQs to FAT-waived sources or sources eligible for waiver, the agency is able to get the items to the military customer more than 8 months sooner than if it did not limit sources. Contracting Officer's Statement (B-401576) at 6; Contracting Officer's Statement (B-401724) at 7. Given the critical need for these items, we find this restriction to be reasonable.

We also find no basis to conclude that Starwin was denied a fair opportunity to compete. In this regard, the record shows that the government provided Starwin with the same opportunity as Omohundro to have its radomes tested at no cost to Starwin. Starwin's president participated in the testing, and Starwin does not allege that the testing was flawed. The test report shows that Starwin's radomes failed testing in significant ways--both "cumulatively" and "destructively." Starwin has not identified any steps that it has taken to address these failures, such that it could pass the tests if the tests were repeated. Starwin also is not precluded from repeating the testing at its own expense. On this record, we cannot conclude that Starwin was denied a fair opportunity to compete.

Finally, Starwin asserts that the agency improperly "split" the requirements for AFT and forward transmit radomes into two separate solicitations, each valued at less than the simplified acquisition threshold, in order to use simplified acquisition procedures and avoid the requirement for full and open competition. As discussed above, Starwin currently is not an eligible source to compete for these requirements, no matter how they are solicited. In any event, we find no evidence in the record that the agency did anything improper. As noted above, historically, the agency has purchased AFT and forward transmit radomes separately, under different solicitations, at different times, and in different quantities. The radomes are not

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<sup>7</sup> We find unpersuasive Starwin's argument that the backlog and urgent need is due to the agency's lack of advance planning. To the contrary, we think the agency has acted reasonably under the circumstances.

issued in pairs to the military customers and are replaced individually and only as needed.

The protests are denied.

Michael R. Golden  
Managing Associate General Counsel