



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dyna-Air Engineering Corp.

File: B-271587

Date: July 8, 1996

Peter A. Quinter, Esq., Becker & Poliakoff, for the protester.

Timothy Sullivan, Esq., and Martin R. Fischer, Esq., Adduci, Mastriani & Schaumberg, for Vickers, Inc., an intervenor.

Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where record does not demonstrate that agency delayed an unreasonable period of time prior to forwarding protester's request for source approval to the design control activity or that the design control activity unduly delayed its review once the request was received.

DECISION

Dyna-Air Engineering Corp. protests the rejection of its offer under request for proposals (RFP) No. SPO500-95-R-A381, issued by the Defense Logistics Agency (DLA), Defense Industrial Supply Center (DISC), for metallic particle detectors. Dyna-Air's offer was rejected because the protester had not been approved as a source for the item at the time of award. The protester complains that DISC delayed unduly before forwarding its request for source approval to the Navy activity with approval authority for the item, and that, as a result, the evaluation was not completed prior to the award date.

We deny the protest.

BACKGROUND

The Current RFP

RFP No. SPO500-95-R-A381, which was issued on September 8, 1995, requested offers on a primary quantity of 65, and on two alternate quantities of 80 and 130, respectively, metallic particle detectors, National Stock No. 2995-01-120-8715, General Electric Co. Part No. 3033T30G01. The item is a critical part of the GE T700 Turboshaft engine, in which it functions as a sensor to alert the crew to an

impending failure of oil-wetted engine parts. The solicitation identified Vickers, Inc. Part No. 1D463 as an acceptable alternate for the item and advised offerors not cited as acceptable sources that they would need to obtain source approval from the design control activity¹ and that they should submit their source approval requests and technical data packages to DISC with their offers. The solicitation also incorporated DLA's standard "products offered" clause, requiring that offerors of alternate products furnish with their offers legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and functions of the product being offered. The clause advised that the government would make every reasonable effort to determine acceptability prior to award, but that if it could not, proposed alternate products might be considered technically unacceptable for this procurement. The clause further advised that if the evaluation were subsequently completed, the offeror would be notified of the results, and if the product were determined acceptable, it would be considered for future awards.

Three offerors responded to the RFP prior to the October 12, 1995, closing date. Vickers offered its own Part No. 1D463 at a price of \$924.74 for the primary and first alternate quantities and a price of \$864.69 for the second alternate quantity. Kampi Components, a nonmanufacturer, also offered the Vickers part, at a price of \$1,018.52 for the primary quantity.² Dyna-Air offered its own part number 4-1091-100--for which, according to a cover letter accompanying the proposal, it had submitted a source approval request on May 24, 1995, in connection with an earlier solicitation. Its price was \$435 for all three quantities.

After reviewing the offers, the contracting officer determined that the Dyna-Air proposal had to be considered technically unacceptable since evaluation of the technical data package that it had previously submitted had not yet been completed. She further determined that Kampi's price was not competitive with Vickers'. She therefore decided to conduct negotiations with Vickers only. Upon completion of the negotiations with Vickers, the contracting officer requested an update on the Dyna-Air source approval request and was advised that as of March 12, 1996, the Navy still had not completed its evaluation. On March 20, DISC awarded Vickers a contract for 130 metallic particle detectors at a unit price of \$737.66.

¹Although not identified as such in the RFP, the design control activity for the part is the Naval Air Systems Command.

²Kampi did not submit prices for the alternate quantities.

The Prior RFP

DISC issued RFP No. SPO500-95-R-0120, the solicitation in response to which the protester submitted the technical data package discussed above, in March of 1995. As amended, the RFP requested offers on 169 items, including the metallic particle detectors at issue in this protest, which were listed as Item 0021. Dyna-Air submitted offers on 31 of the 169 items, including Item 0021. It submitted technical data packages for all 31 items, some prior to the RFP's closing date of May 24, 1995, and some after the closing date.

Many of the technical data packages were incomplete, however, and by letter dated August 2, 1995, DISC asked the protester to furnish additional documentation, including a complete set of current configuration drawings for each item. Dyna-Air responded by letter dated August 15, explaining that many of the items were "intrinsically similar" to other items that it was offering and that in some instances it was submitting technical data (e.g., drawings) for the "similar item" rather than for the item itself. For items significantly different from one another, it was submitting separate technical data, the protester emphasized.

DISC's Value Engineering Division, which had responsibility for ensuring the completeness of Dyna-Air's technical data packages prior to forwarding them to the Navy, was not satisfied with the protester's response that it was requesting source approval for certain items based on technical data relating to similar items,³ and contacted the protester several times over the course of the next 2-1/2 months to request additional information. Dyna-Air submitted additional data for 4 of the 31 items. On November 15, DISC notified the protester that its technical data packages did not contain sufficient information for approval and that its offers under RFP No. -0120 were therefore being rejected. Specifically, the letter stated that the packages lacked complete engineering/manufacturing drawings.

Dyna-Air responded by letter dated November 20, contending that it had submitted complete technical data packages for 10 of the 31 items, including item 0021.⁴ With regard to these 10 items, Dyna-Air threatened to protest to our Office if award was made at a price higher than the price it had offered. With regard to the remaining

³This dissatisfaction is apparent, for example, in the following notation, made by a DISC representative during a meeting with Dyna-Air's president on September 13, 1995: "So how does the ESA [Engineering Support Activity] make the leap from 'similar' (demonstrating capability) to approval of making the exact part?"

⁴The protester contended that it had submitted complete technical data packages for six items, including item 0021, with its offer, and that it had submitted complete data packages for the four others in response to DISC's request.

21 items, the protester conceded that it had not submitted complete technical data packages. Upon receipt of this letter, DISC's Value Engineering Division prepared a Request for Engineering Support for each of the 10 items and forwarded the technical data packages to the Naval Inventory Control Point (NAVICP) Philadelphia for technical review and disposition.⁵

NAVICP Philadelphia received the request for engineering support in mid-January 1996.⁶ Due to a backlog of other work, the cognizant NAVICP engineer was not able to begin work on the item until mid-March. In early April, the NAVICP engineer met with representatives of DISC and Dyna-Air to discuss the technical data packages and to ascertain what category of submittals they were. In this regard, the Source Approval Information manual on which Dyna-Air had been relying at the time it prepared the packages provided for three categories of submittals: same item (item previously provided to the original equipment manufacturer (OEM)); similar item (item similar to an item previously provided to the OEM, Air Force, or Navy); and new item (item not previously provided to, and not similar to items previously provided to, OEM, Air Force, or Navy). Dyna-Air had submitted the information that it thought was required for approval of a "new item" (i.e., it had not submitted current configuration drawings for a similar item, as required for approval under the "similar item" category). The Navy, however, had revised its Source Approval Information manual in January of 1995 to eliminate the "new item" category. Accordingly, Dyna-Air was instructed at the April meeting that it would need to submit supplemental information concerning a similar item that it had previously furnished to the OEM or the government in order for its submittal to be considered under the "similar item" category.

⁵According to DISC, it did this because it realized that it was at an impasse as far as obtaining any additional information from Dyna-Air was concerned. A different explanation for the decision to forward the packages was furnished to the protester, however. It was advised by the contracting officer on December 1 that DISC had further examined the 10 technical data packages that the protester maintained were complete and had determined that they did contain sufficient information for DISC to forward them to the Engineering Support Activity for its source approval evaluation.

⁶Neither DISC nor NAVICP Philadelphia could account for the 1-1/2-month delay between DISC's forwarding of the request for engineering support and NAVICP's receipt of it--although both activities theorize that the delay may have been attributable to a glitch in a new automated referral system that DLA and NAVICP had just installed and were trying out at the time.

In mid-April, Dyna-Air submitted the supplemental data requested to DISC, which was immediately forwarded to NAVICP. NAVICP reviewed the package in early May and determined that additional information concerning the protester's quality assurance system was still required. NAVICP projected that this additional information would be received and the package would be ready to forward to the Naval Air Depot (NADEP), Cherry Point, North Carolina--the activity ultimately responsible for the source approval decision--on May 10, 1996, and that NADEP would then require 90 to 120 days to complete its review. In other words, the Navy projects that evaluation of the package will not be completed until mid-August 1996, at the earliest.

DISCUSSION

Dyna-Air complains that DISC delayed unduly before forwarding its technical data package for the metallic particle detectors to the Navy, and that, as a result, the Navy did not have sufficient time to complete evaluation of its technical data prior to the award date, which deprived it of a reasonable opportunity to compete under the RFP.

The Competition in Contracting Act of 1984 (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) (1994). When a contracting agency restricts a contract to an approved product, and uses a qualification requirement, it must give offerors proposing alternative products a reasonable opportunity to qualify. BWC Technologies, Inc., B-242734, May 16, 1991, 91-1 CPD ¶ 474. This opportunity to qualify includes ensuring that an offeror is promptly informed as to whether qualification has been attained and, if not, promptly furnished specific information why qualification was not attained. Rotair Indus., 69 Comp. Gen. 684 (1990), 90-2 CPD ¶ 154. Failure to act, within a reasonable period of time, upon requests for approval as a source deprives an offeror of a reasonable chance to compete and is inconsistent with the CICA mandate that agencies obtain "full and open" competition through the use of competitive procedures. Rotair Indus., Inc., B-224332.2; B-225049, Mar. 3, 1987, 87-1 CPD ¶ 238.

We do not think that the record here demonstrates that DISC delayed an unreasonable period of time prior to forwarding Dyna-Air's technical data package for item 0021 to the Navy. First, it is apparent that Dyna-Air's technical data package for Item 0021, as originally submitted, was incomplete. Not only does the record contain a statement from the cognizant DISC employee to this effect, but further, the protester stated in its letter of August 15 that it was enclosing a data package for Item 0021, which we interpret as an admission that any previous package had been incomplete. Thus, any delay between May and mid-August was clearly attributable to the protester's failure to submit a complete technical data package.

Further, we do not think that an additional delay of 3-1/2 months (from mid-August to late November) was unreasonable given the circumstances in which the technical data package for Item 0021 was submitted. The package for Item 0021 was submitted at approximately the same time as 30 others from Dyna-Air, and as a consequence, DISC's Value Engineering Division had a large number of technical data packages to review at the same time; this inevitably would have slowed down their processing of each individual package. In addition, many of the packages—even as supplemented—were incomplete (since they lacked appropriate drawings), and we think that it was not unreasonable for DISC to hold off on forwarding any complete packages while it sought to obtain the data missing from the incomplete ones. Where, as here, the items for which approval is sought are closely related, this approach allows the technical information to be presented to the design control activity in a unified (as opposed to piecemeal) fashion, which promotes efficiency in the source approval process. Furthermore, it is apparent from the fact that the protester was requesting approval of certain items based on technical information pertaining to others that it anticipated (and intended) that its packages would be considered together.

Given that any delay in submitting the technical data package to the Navy design control activity was the result of reasonable attempts to secure missing information from Dyna-Air, we see no basis to conclude that DISC unreasonably delayed consideration of the package. See Rotair Indus., Inc., B-219994, Dec. 18, 1985, 85-2 CPD ¶ 683.

Turning then to the Navy's handling of the technical data package, we need not determine the reasonableness of NAVICP's two month delay in placing the item in work status since it is clear from the record that even if the NAVICP engineer had been able to begin work on the item immediately in mid-January, the evaluation would still not have been completed prior to the mid-March award date. In this regard, the Navy projects that it will take NADEP 90 to 120 days to complete its testing once Dyna-Air's technical data package has been forwarded to it—a period of time that the protester has not challenged as unduly long and that we think is reasonable given the sort of testing to be performed.

The protest is denied.

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