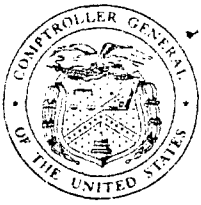


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194393

DATE: September 5, 1979

MATTER OF: Arista Devices Corp.

[Protest of Manufactured Part Being Removed From Approved Items List]

DIGEST:

1. No notice need be given manufacturer that product is removed from approved items list when defects are due to Government specification deficiencies and manufacturer's product conforms to those specifications.
2. Manufacturer does not submit technically acceptable proposal merely by offering to supply parts previously provided in prior solicitations. Parts must not only meet technical specifications but must also have performed in technically acceptable manner.
3. It is not improper to remove manufacturer's part from approved items list and to procure item on source controlled basis where it is shown that adequate specification does not exist for competitive procurement purposes.

*DLA 02628
DLA 02629*

AGC 02628

Arista Devices Corp. (Arista) protests the award of a contract to Control Products Division of the Amerace Corporation (Control) under request for proposals (RFP) DLA900-79-R-0925, issued by the Defense Logistics Agency (DLA). The procurement was for solenoid relays, NSN 5945-00-729-7813, to be manufactured in accordance with Control Products part number (P/N) SF-21WC3 for use in tank fire extinguishing systems. The procurement was limited to "approved item" sources whose product had current Government approval. Arista's P/N 7813 had previously been an "approved item." Arista bases its protest on the fact Arista P/N 7813 was removed from the approved items list because of deficiencies reported by the Army, without notice to Arista.

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It is reported that the original relay manufacturer was Control's predecessor, Agistat Division of ESNA. Originally the part was a source controlled item because the technical data for this item was inadequate for competitive procurement. Although an attempt had been made to procure the item competitively in 1970, the contract which was awarded to a new supplier at that time was terminated prior to any deliveries because of specification deficiencies. Another data package was developed in 1974, and an invitation for bids was issued for the relay. Arista was awarded the contract. In early 1976, the Army received deficiency reports on the Arista part which showed that the cover to the relay became unsealed in certain situations. After evaluation of the deficiencies by the U.S. Army Tank Automotive Command, it was concluded that the technical data package was inadequate to assure that an item manufactured in accordance with the specification requirements would meet the Government's needs. As a result, Arista P/N 7813 was removed as an approved item, and the relay was redesignated a source controlled part.

Arista, while not conceding that it in fact was the supplier of the defective relays, suggests that the covers were not sealed properly at the supplier's factory. Arista admits that it encountered the same problem on the first run relays supplied under its earlier contracts but contends that the problem was rectified by soldering, even though the design specifications do not require the covers to be soldered to the units. Arista further asserts that it has supplied 765 units to the Government and has never received a notice of unsatisfactory material. Therefore, it claims that it should not have been removed from the approved items list. However, it is DLA's position that it does not know if Arista's changed manufacturing procedure will cure the problem because the agency lacks testing equipment and other data to make such a determination. Although the specification does not require a particular type of seal for the cover, the relays supplied by Control were apparently not subject to the problems encountered by the Arista unit. In any event Arista believes that it should have been given an opportunity to correct any defects

in the products it previously supplied and that it was entitled to notice of those defects by Defense Acquisition Regulation (DAR) §§1-1110 and 14-406 (1976 ed.).

First, in view of Arista's admission that it supplied similarly defective items to DLA; the identification of Arista and its P/N on the Army's unsatisfactory material report; and the fact that the problem previously has not been encountered in relays supplied by Control (the only other approved source), we believe that it is clear that the defective relays were the protester's.

With respect to the notice issue, neither of the cited regulatory provisions provide support for Arista's position. DAR § 1-1110 deals with reporting unsatisfactory contract performance to "the activity that prepared the specification." DAR § 14-406 is concerned with supplies which do not conform to the Government's specifications; here Arista's parts do comply so that the defect is attributable to the specifications and not anything within Arista's control. We do not therefore believe that the agency was required by the regulations to notify Arista prior to dropping that firm's part from the approved items list.

It is our view that an offeror does not submit a technically acceptable offer under a solicitation merely by offering to provide parts previously supplied and accepted. Those parts must have not only met the specifications but must also perform in a technically acceptable manner. See Joyce Teletronics Corporation, B-190316, January 11, 1978, 78-1 CPD 24. Arista has not shown that its present sealing method will meet the Army's needs since there is no acceptable test to make that determination. Merely stating that no further complaints were received will not meet this burden.

In this vein, DAR §1-313 provides that:

"(a) Any part * * * for military equipment,
* * * must be procured so as to assure the

requisite safe, dependable, and effective operation of the equipment. * * * When it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis * * *.

"(b) * * *

"(c) Parts * * * should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data * * * test results, and quality assurance procedures, are available * * * to assure the requisite reliability and interchangeability of the parts * * *. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known."

Our Office has recognized that Government procurement officials, who are familiar with the conditions under which supplies, equipment, or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the Government's actual needs. Consequently, we will not question an agency's determination of what its actual needs are or what products or equipment will satisfy those needs unless there is a clear showing that the determination has no reasonable basis. Jarrell-Ash Division of the Fisher Scientific Company, B-185582, January 12, 1977, 77-1 CPD 19; Herley Industries, Inc., B-186947, September 30, 1977, 77-2 CPD 247. Thus, the fact that Arista disputes DLA's position on these matters does not invalidate it. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. In this connection, we point out that

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the protester, not the contracting agency, has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.,--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

Due to the limitations of the specifications available we cannot conclude that DLA acted improperly by removing the Arista item from the approved items list.

The protest is denied.

Deputy

R. F. K. Allen
Comptroller General
of the United States