

DECISION

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

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FILE: B-201226, B-201308,
B-201309, B-201310, **DATE:** June 15, 1982
B-201311, B-201312, B-205269.2
MATTER OF: Electrical Conductors, Inc.

DIGEST:

1. GAO finds that procuring agency acted properly in making six awards to the only known source of supply for items urgently required by the Government. Although evaluation of protester's item was in process when the awards were made, the awards could not be delayed until the evaluation was completed.
2. GAO concludes that its consideration of the functional equivalency of the protester's item with an item acceptable to the procuring agency would be premature, since the procuring agency's evaluation of the acceptability of the protester's item is almost complete and the record indicates that the result may satisfy both the protester and the procuring agency. GAO urges the procuring agency to expeditiously complete the evaluation and to withhold award under the pending procurement until the procuring agency makes the acceptability determination.

Electrical Conductors, Inc. (ECI), protests the award of six contracts and the possible award of another contract to Belden Corporation under seven requests for proposals (RFP) issued by the Defense Logistics Agency (DLA) for supplying certain types of special purpose electrical cable. ECI essentially contends that DLA should have made award under six of the RFP's and should make award under the other RFP to ECI because ECI is proposing lower priced items which are functionally equivalent to the Belden items. DLA explains that, to date, it has not determined that ECI's items are functionally equivalent to Belden's items; however, ongoing testing may show functional equality. In the interim, urgent needs required that six awards be made to Belden. We find that DLA's actions were proper.

Each RFP specified a certain type of special purpose electrical cable, identified by a Belden part number. DLA explains that Belden parts were specified because Belden was the only known supplier whose items could meet the Government's needs. DLA states that similar items from other sources constantly failed, resulting in danger to life and property. In response to each RFP, ECI submitted a lower priced proposal based on its items, which ECI claims are functionally equivalent to the corresponding Belden items.

When DLA received ECI's proposal in response to RFP No. DLA500-80-R-0553 for Belden's No. 8776, in which ECI proposed its part No. 1504, DLA advised ECI that ECI's proposal would be acceptable if ECI could show that its item was equal to Belden's. In an effort to provide DLA with evidence of functional equality, ECI incurred about \$10,000 in expenses to obtain certain data from an independent testing facility. ECI submitted this information and samples to DLA for examination. Before DLA's technical advisors could complete their evaluation, awards had to be made to Belden on six of the seven RFP's on the basis of urgency. While ECI believes that DLA's technical advisors could have completed their evaluation more quickly, ECI does not dispute DLA's urgency determination. Meanwhile, ECI met with DLA's technical advisors and proposed changes to its item to satisfy DLA, and the record shows that DLA's evaluation is almost complete with the indication that ECI's item will be found acceptable. DLA is also examining another Federal agency's specifications for special purpose electrical cable to determine whether DLA's needs could be satisfied by using that specification in future procurements.

ECI contends that DLA has enough evidence now to determine that its item is functionally equivalent to Belden's. Alternatively, ECI argues that the RFPs' requirement for Belden items (1) is unduly restrictive of competition, (2) is improper because adequate specifications are available, and (3) violates applicable procurement regulations regarding the use of purchase descriptions. ECI demands reimbursement for its expenses regarding the testing and reimbursement of its proposal preparation costs and award, where practical.

In response, DLA reports that Belden is at present the only known supplier capable of meeting the Government's needs and that every effort is being made to ascertain whether ECI's and other vendors' items will meet the Government's needs both in the pending procurement and in future procurements. DLA also explains that, at present, without specifying a Belden part number, DLA does not have adequate data to satisfactorily describe its cable needs.

Regarding the six awards, we find no indication in the record establishing that ECI's items should have been considered as functionally equivalent to Belden's prior to the time that urgent needs required that award be made to the only known source of supply, Belden. Further, in our view, DLA did not have adequate data to specify what its needs were without using a Belden part number. In the circumstances, we have no basis to conclude that DLA acted improperly in specifying a Belden part number in each RFP. Moreover, DLA considered ECI's proposal, established a procedure whereby ECI could demonstrate its item's acceptability, and withheld awards on each RFP until urgent needs required that award be made. Accordingly, this aspect of ECI's protest and ECI's related claims for testing expenses and proposal preparation costs are denied.

Regarding the pending procurement, we note that a great deal of effort by ECI (including providing DLA data that ECI obtained at ECI's expense from the independent testing facility) and DLA has been expended on determining the acceptability of ECI's item. We also note that the process is almost complete, possibly to the satisfaction of both parties. In the circumstances, we encourage DLA to expedite the final stages of the process and we encourage ECI to work with DLA to expedite the final acceptance testing. We urge DLA to withhold the pending award until the acceptability determination on ECI's item is made. In sum, we conclude that our consideration of the functional equality of ECI's item, prior to a rejection from DLA, would be premature. Accordingly, this aspect of ECI's protest is dismissed.

ECI's protest is denied in part and dismissed in part.

Milton J. Aronson

Acting Comptroller General
of the United States