

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

27427

FILE: B-213032**DATE:** February 13, 1984**MATTER OF:** Compressor Engineering Corporation**DIGEST:**

Agency properly restricted procurement of spare air compressor parts to original equipment manufacturer's parts where agency neither possessed nor had rights to the original equipment manufacturer's technical data necessary for competitive procurement and only the original equipment manufacturer's parts had been tested for reliability.

Compressor Engineering Corporation (CECO) protests the issuance of a delivery order by the Defense Construction Supply Center (DCSC) to Ingersoll-Rand Company for the supply of 70 (later increased to 143) inlet valve assemblies, for use in shipboard air compressors, under request for quotations (RFQ) No. DLA700-83-Q-K665. CECO complains that DCSC issued the delivery order to Ingersoll-Rand, even though its quoted price was higher than CECO's, because DCSC had improperly determined that CECO's offer was technically unacceptable. We deny the protest.

The RFQ was issued on January 20, 1983 with a closing date of February 14. Quotations were received from Ingersoll-Rand and CECO at per unit prices of \$425 and \$385, respectively. The solicitation's procurement identification description (PID) at page 3 of the schedule (Standard Form (SF) 36) identified the inlet valve assembly being purchased as Ingersoll-Rand part number MLH 3823961 (National Stock Number 4820-01-023-6792) and further described it as a "critical application item." The schedule at page 10 contained clause L32a, "CRITICAL APPLICATION PARTS - SPECIFIC SOURCE(S)," which advised that the government does not have adequate manufacturing drawings and quality assurance procedures, or the rights

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to them, and only the particular manufacturer's part number specified in the PID therefore would be acceptable for this procurement. The RFQ also advised that quotations of alternate items had to be accompanied by complete data for technical evaluation, and that when technical evaluation of quoted alternate part numbers would require more than 30 days, such quotations, if low, would not be considered for the present procurement but would be evaluated as to acceptability for future purchases.

CECO quoted its own part number as an alternate to the Ingersoll-Rand part number and the contracting officer requested that CECO furnish its manufacturing drawings for evaluation purposes. While the firm provided its own drawings, it did not furnish DCSC with either copies of Ingersoll-Rand's drawings or any performance and test data on CECO's part. DCSC's Supply Operations Division then informed the contracting officer that since the valve assemblies were in short supply, it would be necessary to issue a delivery order immediately. At the same time, DCSC's Technical Operations Division indicated that it would take 60 to 90 days for CECO's drawings to be evaluated by the appropriate engineering support activity. The contracting officer consequently determined that there was not enough time to evaluate CECO's alternate part, and that a delivery order therefore should be issued to Ingersoll-Rand.

CECO protested the contracting officer's action, and the contracting officer responded that DCSC would withhold issuance of a delivery order until October 17 so that CECO's part could be further evaluated by the appropriate engineering support activity on the chance that more detailed data would be available at that activity. In her response to CECO, the contracting officer stressed that, as indicated by clause L32a of the RFQ, the government did not possess Ingersoll-Rand's drawings, and that CECO's drawings by themselves were insufficient to evaluate CECO's valve assemblies for technical acceptability.

CECO failed to furnish any additional data, but DCSC states that the firm's drawings were sent to both the Navy Ships Parts Control Center (NSPCC) and the Naval Sea Systems Command (NAVSEA) for evaluation. NSPCC responded that CECO's part could not be evaluated because the

activity did not have Ingersoll-Rand's drawings, and that Ingersoll-Rand regarded the drawings as proprietary and would not furnish them to the government. NAVSEA likewise stated that it did not have Ingersoll-Rand's drawings and therefore could not evaluate CECO's part, and recommended that the delivery order be issued to Ingersoll-Rand, the only manufacturer whose part had qualified for approval. NAVSEA referred the contracting officer to a requisition document submitted originally, which stated that the valve assemblies are used in Ingersoll-Rand air compressors critical to various shipboard systems and that Ingersoll-Rand's part had undergone a 2000-hour reliability test. Accordingly, DCSC notified CECO that its part was technically unacceptable because the firm had failed to provide sufficient information for evaluation purposes. DCSC then issued a delivery order to Ingersoll-Rand.

CECO protests that the rejection of its part as technically unacceptable was improper, and urges that the government is obligated to provide offerors of alternate parts the means to test their parts, regardless of whether the government has specifically represented in a solicitation that it will perform or arrange for such testing. The firm also asserts that the costs of such testing as borne by the government will be outweighed by the savings that naturally result from lower prices occasioned by more competitive procurements. CECO asks this Office to recommend termination of the delivery order to Ingersoll-Rand and the issuance of a new delivery order to CECO as the low offeror, and requests that we direct DCSC to advise CECO of the efforts that will be taken to evaluate CECO's parts for future purchases.

Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.) permits the procurement of spare parts on a restricted basis in appropriate circumstances. The regulation does not, however, justify sole-source restrictions regardless of whether competition could be obtained. Metal Art, Inc., B-192579, April 3, 1979, 79-1 CPD 229. The validity of any procedure which limits the extent of competition depends upon whether the restriction serves a bona fide need of the government. Such restrictions include those essential to assure procurement of a satisfactory end product or to insure the high level of quality and reliability necessitated by the criticality of the product. Department of Agriculture's use of Master Agreement, 54 Comp. Gen. 606 (1975), 75-1 CPD 40. Basic characteristics of approved,

although restrictive, procedures are that they function so that (1) no firm which is able to provide a satisfactory product is necessarily precluded from competing on procurements of that item, and (2) a firm may become eligible to compete at any time it demonstrates, under suitable procedures, that it is able to furnish an acceptable item. Id.

Thus, while DAR § 1-313(c) allows a procuring activity to solicit only approved suppliers, it does not preclude the submission and consideration of proposals from unapproved sources which can otherwise qualify their products under suitable testing procedures. See Metal Art, Inc., supra. Our Office thus has held that agencies should give alternate producers an opportunity to qualify when procuring replacement parts pursuant to DAR § 1-313(c). See Parker Hannifin Corporation, B-199937, October 2, 1981, 81-2 CPD 270. In that same regard, however, we have held that the procuring activity may properly restrict such a procurement to the approved source where insufficient data or test results prevent assuring the requisite reliability and interchangeability of critical parts. See Salem Manufacturing & Sales, Inc., B-211554, August 30, 1983, 83-2 CPD 281; Quality Diesel Engines, Inc., B-210215, June 20, 1983, 83-2 CPD 1.

Here, neither the government nor CECO possesses Ingersoll-Rand's proprietary drawings. NAVSEA notes that Ingersoll-Rand's drawings are needed to evaluate CECO's part for correct dimensions and tolerances, correct material composition, and proper hardness. The Ingersoll-Rand part had been approved after the entire Ingersoll-Rand air compressor unit had undergone 2,000 hours of reliability testing (the cost for which, we understand, was primarily borne by Ingersoll-Rand). According to DCSC, even if Ingersoll-Rand's drawings had been available for comparison with CECO's drawings, NAVSEA would still have desired testing of CECO's alternate part in order to detect possible defects, such as cracked castings and high noise levels, not detectable from a simple drawing comparison. DCSC states that the inlet valve assemblies are critical to the proper functioning of the air compressors, which in turn run various systems in surface combat ships. In gas turbine-driven ships, the compressor starts the main engine; in steam-driven ships, the compressor runs the

controls for the boilers, feed water and fuel water. Other applications include the operation of torpedo services, reactor plant supply, launching anti-submarine rockets, and emergency breathing systems. According to DCSC, the Navy considers these to be important functions whose reliability cannot be infringed without endangering the safety of both the ship and the crew. Further, the Navy also states that if the valve assemblies fail, requiring complete overhaul, repairs could cost as much as \$70,000 per compressor. Based upon the record, therefore, we do not think it was unreasonable for DCSC to have rejected CECO's part as technically unacceptable where the valve assembly was, as specified in the RFQ, a critical part and since, after having been afforded an opportunity to do so, CECO failed to demonstrate that its part was equal in terms of performance and reliability to the Ingersoll-Rand part. See Mercer Products & Manufacturing Co., Inc., B-210536, October 12, 1983, 83-2 CPD 449.

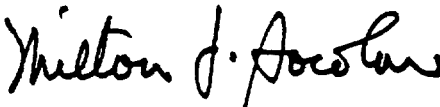
CECO also urges that, as a practical matter, an alternate manufacturer cannot become qualified where the government will not test its product, and argues that the government is obligated to maximize competition by providing the testing necessary to evaluate such alternate parts. CECO relies upon our decision in 38 Comp. Gen. 357 (1958) to support its position. However, as DCSC correctly points out, such reliance is misplaced.

Our decision in that case held that where an agency had specified in an invitation for bids that it would arrange for the testing of alternate products for inclusion on a qualified products list prior to bid opening, the denial of or failure to act on a low bidder's timely request to have its product tested made the award to other than the low bidder of questionable legality. The same situation, however, is not present here. DCSC did not indicate in the RFQ or otherwise that it would test any alternate products. Instead, as stated above, the solicitation stated that the furnishing of complete data for technical evaluation purposes was the responsibility of the alternate offeror. Moreover, we believe it would be unreasonable to expect the Navy to bear the cost for testing CECO's part, which the Navy asserts would be \$150,000, where Ingersoll-Rand's total price is \$60,775 and the difference between its price and CECO's is \$5,720.

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Finally, we note that although the administrative report in this case indicated that CECO's valve assemblies would be evaluated further, the agency has subsequently informed us that this cannot be done for the same reason that the part was originally found to be technically unacceptable--the lack of both the Ingersoll-Rand drawings and sufficient performance data on the CECO part.

The protest is denied.

for 
Comptroller General
of the United States