

Zelkowitz



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Freund Precision, Inc.

File: B-223613

Date: November 10, 1986

DIGEST

When 16 months elapse between submission of an offer for an alternate product and award, agency's failure to consider whether it could evaluate the alternate product by such means as first article testing is not reasonable or consistent with the Competition in Contracting Act requirement for advance planning.

DECISION

Freund Precision, Inc. protests the award of a contract to the Grimes Division of Midland Ross Corporation under request for proposals (RFP) No. DLA400-85-R-4679, issued by the Defense General Supply Center (DGSC), Richmond, Virginia, a field activity of the Defense Logistics Agency (DLA). Freund questions the contracting activity's failure to complete evaluation of its offer for an alternate product within the 16-month period between the submission of its initial offer and the award.

We sustain the protest.

The solicitation, issued on February 8, 1985, sought offers for a base quantity of 300, plus an unspecified option quantity, of a light base assembly, identified in the RFP as Grimes part number 11-04-83-1. It is a component of an emergency exit light used on several Air Force and Navy aircraft. Offerors were permitted to submit quotes for alternate products as defined in a standard solicitation clause entitled "Product Offered." This clause requires offerors of alternate products to submit all drawings, specifications, or other data necessary to enable the government to determine whether they are either identical to or physically, mechanically, electronically, and functionally interchangeable with the product specified. The clause warns offerors that the failure to furnish all necessary information may preclude their consideration, and it additionally states that an alternate product will be considered technically unacceptable

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if acceptability cannot be determined before award. The solicitation further provided that award would be made to the lowest-priced, technically acceptable offeror.

Freund and Grimes were the only firms to submit offers. Freund, offering an alternate product (Freund Precision part number 50280) that it stated had the identical form, fit, and function of the specified part, submitted the low unit price, \$88.10. Its total contract price was \$26,430 FOB destination. Grimes' unit price was \$90.05 for a total contract price of \$27,015 FOB origin.

Freund included drawings of its product with its offer but did not furnish the agency with any other technical data. Technical personnel at DGSC reviewed the drawings and concluded that the information furnished was insufficient to evaluate Freund's product. They notified Freund of this finding and advised the firm to submit additional technical data for both its product and the specified Grimes part by May 30, 1985.

In responding to this request, Freund availed itself of the activity's reverse engineering program, which entailed the purchase of the designated part from the agency and use of this sample to develop drawings through reverse engineering. The protester submitted these additional materials to the agency on May 31, 1985. Again, the technical personnel at DGSC reviewed Freund's materials but determined that without drawings of the Grimes part, they could not evaluate the technical acceptability of the protester's product. DGSC also furnished Freund's materials to engineers of its Value Engineering Program Office, which in turn forwarded them for review to the Navy and Air Force offices responsible for evaluating alternate products. DGSC also tried unsuccessfully to obtain the required drawings and technical data from Grimes. The Navy and Air Force both stated that they could not evaluate Freund's product without additional test and performance data to verify adequate performance of the end item, i.e., the emergency light with the Freund part installed.

In June 1986, DGSC concluded that it could not then evaluate Freund's product and that it would be unable to do so in the near future. Moreover, by this time DGSC's stock of the part had been depleted, as it had not purchased any of the emergency light base assemblies since the inception of this procurement in January 1985. The contracting officer therefore determined that award could not be delayed any longer. He asked Grimes, the only offeror found technically

acceptable, to submit a best and final offer. On June 18, 1986, DGSC awarded that firm a contract for the base quantity of 300 at a unit price of \$99. By letter dated July 1, DGSC notified the protester of this action and further advised it that first article tests were being developed and that an adequate competitive procurement package should be available by September 1987.

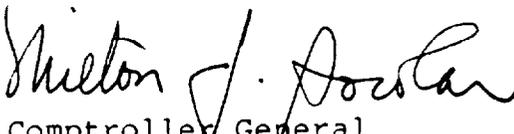
Freund essentially charges that DGSC's failure to evaluate its product in the 16-month period that elapsed from the submission of its initial offer to the date of award was unreasonable. The part being procured, Freund states, is of a simple design that is easily analyzed by reverse engineering, as the efforts of its own staff demonstrate. Freund continues that the drawings it prepared during this process, at its own expense, are sufficient to enable the agency to evaluate its product. DGSC's insistence on obtaining all technical data for the designated Grimes part in order to evaluate its product, Freund thus maintains, perpetuates the sole-source procurement of the product.

The record here indicates that had DGSC and the user activities planned ahead, they might have been able to evaluate Freund's alternate product without resort to comparisons of specifications and drawings for the Grimes part. As suggested by DGSC in referring to future acquisitions, first article testing can be utilized to evaluate alternate offers for this spare part. Compare B.H. Aircraft Co., Inc., B-222565 et al., Aug. 7, 1986, 86-2 CPD ¶ 143 (agency's insistence on engine qualification testing, rather than first article, is not unreasonable when duct assemblies offered by protester are critical to safe and effective operation of C-130 aircraft). While we recognize that first article approval takes time, it does not appear that DGSC even considered employing this technique for the subject procurement. Had it done so the beginning of the 16-month period that elapsed between submission of initial proposals and contract award, it should have been able to conduct a competitive procurement. In this regard, we note that by May 1985, when the agency asked the protester to submit additional data concerning both its own and the Grimes part, the Competition in Contracting Act of 1984, 10 U.S.C. § 2305 (Supp. III 1985) was in effect. This section requires advance procurement planning and development of specifications so as to permit agencies to obtain full and open competition.

In view of the agency's depleted stock and the fact that first article tests had not been developed at the time of the award in June 1986, we cannot say that the award itself was

improper. However, because lack of advance planning unreasonably denied the protester with the opportunity to compete for this award, we find that Freund is entitled to its costs of filing and pursuing this protest, including reasonable attorney's fees. See 4 C.F.R. 21.6(d), (e) (1986); Malco Plastics, B-219886, Dec. 23, 1985, 85-2 CPD ¶ 701. Freund should submit its claims for such costs directly to the agency. 4 C.F.R. § 21.6(f). Furthermore, we are recommending that the agency, in exercising the option for an additional unspecified quantity of the emergency light base assemblies, procure only the minimum amount needed until it can develop a competitive procurement package which includes an adequate method for qualifying alternate products.

The protest is sustained.

for 
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