



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American BallScrew

File: B-223915

Date: December 10, 1986

DIGEST

1. protest that request for quotations for a preapproved ballscrew unduly restricts competition must be filed before the closing date for receipt of quotations.
2. A potential offeror may not be denied the opportunity to submit an offer (or quotation) and have it considered for a contract solely because the offeror has not met a prequalification requirement if the offeror can demonstrate that the offeror or its product can meet the standards established for qualification before the date specified for award.
3. In procurements with prequalification requirements, contracting agencies have a statutorily-imposed duty to specify in writing and make available upon request all requirements that a potential offeror or its product must satisfy to become qualified, such requirements to be limited to those least restrictive to meet the agencies' needs. By advising an offeror that no specifications, plans or drawings were available for required ballscrews, when the agency had a specification control drawing, the agency effectively precluded the offeror from any opportunity to qualify, in violation of its duty to facilitate qualification and competition.
4. Recovery of the protester's quotation preparation costs and its costs of filing and pursuing the protest, including attorney's fees, is allowed where the contracting agency's actions effectively excluded the protester from the procurement, and there was a substantial likelihood that the protester would have received the award.

DECISION

American BallScrew protests the rejection of its quotation under request for quotations (RFQ) No. FD2050-86-15911. The RFQ was issued by Kelly Air Force Base, Texas, for 42 critical spare-part ballscrews that are a component of the assemblies used to install and remove the engines from F-111 aircraft. Because a failure of a ballscrew could cause an engine to fall, resulting in injuries to personnel as well as damage to the engine, the user activity assigned a procurement method code to the items that restricted competition to previously approved sources. American BallScrew, which is not an approved source, protests that the prequalification requirement was unduly restrictive of competition and that the Air Force failed to provide American BallScrew with a reasonable opportunity to attain approval prior to award.

We sustain the protest.

Background

American BallScrew learned of the procurement through a synopsis published in the Commerce Business Daily (CBD), February 13, 1986, that listed an approximate closing date of April 3, 1986. The synopsis identified the ballscrew assembly by its national stock number assigned by the General Services Administration, and the part numbers of the previously-approved sources, Beaver Precision Products, Inc. and General Dynamics Corporation. There was a brief description of the ballscrew, but no precise specifications. The synopsis stated that the agency would consider quotations from any responsible source, but explained that the source must submit: 1) evidence of satisfactorily having produced the required parts for the government or its prime contractor; or 2) such complete engineering data, qualification test reports, etc. as may be required to determine the acceptability of the source's product. The synopsis further stated that the specifications, plans or drawings related to the procurement were not available and could not be furnished by the government.

On the date the RFQ was issued, March 6, American BallScrew asked a representative of the contracting activity to loan the firm a ballscrew for the purpose of design replication. The protester received no immediate response to the request, but did have an opportunity to inspect visually a ballscrew at Kelly Air Force Base before submitting a quotation on March 14. On April 24, the representative told the protester that there were not enough ballscrews in stock for loaning. The Air Force took no action regarding the quotation until

May 20, apparently because the initial buyer had been reassigned and not replaced until that date. The new buyer advised American BallScrew that it must submit drawings for evaluation.

Since neither of the approved sources had submitted a quotation by June 9, the Air Force again sent each of them an RFQ. Both firms responded by submitting quotations between June 24 and 26. At that time, the Air Force decided to consider only the quotations from the approved sources because the agency's ballscrew stock had been depleted and the ballscrews were critically needed for mission support. On July 18, the Air Force issued a purchase order to Beaver Precision Products based on its quoted price of \$542 per ballscrew. General Dynamics and the protester quoted unit prices of \$590.86 and \$295.00, respectively.

One week before the award, American BallScrew obtained a copy of the specification control drawing and advised the Air Force it would submit the required drawings. The drawings were submitted on July 24, and the agency evaluated them with regard to qualifying American BallScrew's product for future procurements. The Air Force's engineers have determined that the protester will have to submit a prototype ballscrew for performance testing.

Prequalification Requirement Issue

To the extent the protester complains that the Air Force's prequalification requirement was unduly restrictive, the protest is untimely. Our Bid Protest Regulations require that a protest of solicitation improprieties apparent prior to the closing date for the receipt of proposals (or quotations) be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1986); see Ralph Constr., Inc., B-222162, June 25, 1986, 86-1 CPD ¶ 592. The closing date was April 3, 1986, of which American BallScrew had notice based on the CBD synopsis. The protest, however, was filed almost 4 months later on August 1, and therefore we will not consider this issue.

Reasonable Opportunity to Qualify

Although the protester's challenge to the procurement methodology is untimely, its protest that the Air Force did not afford it a reasonable opportunity to prequalify its product is timely and will be considered on the merits.

Initially, we note that the Air Force suggests that American BallScrew was not eligible for award since it was not designated as a preapproved source by the user activity. Section 1216(a) of the Department of Defense Authorization Act, 1985 (Act), 10 U.S.C. § 2319(c)(3) (Supp. III 1985), provides, however, that a potential offeror may not be denied the opportunity to submit an offer (or quotation) and have it considered for a contract solely because the potential offeror has not met a prequalification requirement if the offeror can demonstrate to the satisfaction of the contracting officer that its product meets the standards established for qualification or can meet such standards before the date specified for award. Thus, an offeror may not be excluded from consideration merely because it is not an approved source. In this regard, the Air Force's synopsis of the procurement properly did state that any responsible sources could compete, subject to the requirement for a preaward determination that the source's product was acceptable.

The Act further provides that the contracting agency must specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror or its product must satisfy in order to become qualified, such requirements to be limited to those no more restrictive than necessary to meet the agency's needs. 10 U.S.C. § 2319(b)(2). The agency also must ensure that a potential offeror is provided, upon request, a prompt opportunity to demonstrate its ability to meet the prequalification standards. 10 U.S.C. § 2319(b)(4). These provisions effectively create a duty on the part of a contracting agency to take certain action towards qualifying new sources.^{1/}

The protester argues that the Air Force withheld an available specification control drawing of an approved ballscrew and refused to loan American BallScrew the item, thus depriving American BallScrew of information that would have enabled it to submit the necessary drawings for evaluation. The Air Force responds that the protester did not request the

^{1/} The Act provides for a procedure to waive these requirements if it is unreasonable to specify the standards for qualification that a prospective offeror or its product must satisfy, except with respect to standards for a qualified products list (see Federal Acquisition Regulation, 48 C.F.R. subpart 9.2 (1985)). 10 U.S.C. § 2319(c)(2)(A) & (B). Nothing in the record indicates that these procedures were invoked or that it was unreasonable to specify the standards for qualification.

specification control drawing, which indisputably existed, and that there were insufficient ballscrews in stock for loaning. The Air Force argues that the protester was at fault for failing to contact the buyer to obtain the prequalification requirements immediately after the CBD synopsis was issued, and for delaying submission of its drawings for evaluation.

Regarding the Air Force's failure to loan the protester a ballscrew, we point out that an agency may impose restrictions upon loaning spare-part items because of inventory needs, 10 U.S.C. § 2320(d), and we have no reason to question the Air Force's statement that its inventory was depleted to such an extent that no ballscrew was available for loaning.

It is our view, however, that the Air Force failed to meet its statutorily-imposed duty to devise specific prequalification requirements that were least restrictive of competition, and to advise a potential offeror of those requirements upon request. The record shows that soon after the CBD notice was published, an American BallScrew representative visited the contracting agency to determine what the agency's needs were. Further, the protester requested a copy of the RFQ and subsequently requested the agency to loan it a ballscrew. Although the record does not indicate whether the protester specifically requested the buyer to make available all of the qualifications its product must meet to be approved, it should have been clear that the offeror was seeking all information that would enable it to qualify and to compete.

At that time the Air Force possessed a drawing that detailed the required dimensions and characteristics of the ballscrew. Since the RFQ contained no precise specifications, the drawing would have provided much of the information necessary for prequalification. (The Air Force determined that performance testing also would be required for approval, although not until after the protester had submitted its quotation.) It is disingenuous of the Air Force to argue that American BallScrew never requested the available drawing since American BallScrew had no reason to doubt the truthfulness of the statement in the CBD synopsis that specifications, plans or drawings related to the procurement were not available and could not be furnished by the government. The fact is that the Air Force had a drawing to which offered products must conform, and the disclosure of the drawing would have made the standards for prequalification less vague and restrictive.

If American BallScrew had been given the drawing promptly, we expect that it could have attained product approval in the period of approximately 5 months between when it expressed interest in the procurement and the award was made. In this regard, we note that although American BallScrew did not

produce the required item, the protester contends that it manufactured a commercially available ballscrew that easily could have been modified to meet the agency's needs. In addition, 3 weeks after receipt of the drawing the protester submitted drawings that convinced agency engineers that the protester could be an acceptable source if it submitted a prototype ballscrew that passed testing. It is clear that the agency's actions in withholding the drawing and a precise statement of the prequalification requirements precluded American BallScrew from having the opportunity to develop the item and have it tested with reasonable promptness as required by 10 U.S.C. § 2319(b)(4).

We therefore sustain the protest. Although the protester requests that we recommend termination of Beaver Precision Product's contract for convenience, such action is not feasible since the ballscrews already have been delivered. By separate letter to the Secretary of the Air Force, we are recommending that the agency take appropriate action to allow American BallScrew to qualify its product for further procurements, and to prevent a recurrence of this problem in such procurements.

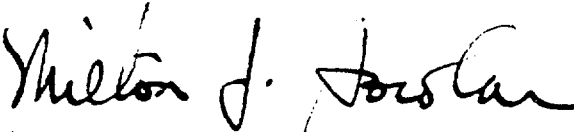
The protester also has requested reimbursement of its quotation preparation costs as well as the costs of filing and pursuing the protest, including attorney's fees. We will allow a protester to recover its quotation preparation costs where the protester, having a substantial chance for award, was unreasonably excluded from the procurement and none of the remedies listed in our regulations, at 4 C.F.R. § 21.6(a)(2)-5, is appropriate. Edgewater Machine & Fabricators, Inc., B-219828.3, Apr. 14, 1986, 65 Comp. Gen. 86-1 CPD ¶ 359. In this case, as indicated above, the Air Force's actions effectively excluded American BallScrew from the competition, and under the circumstances we cannot say that American BallScrew, had it not been so excluded, would not have had a substantial chance for award. We therefore find the protester entitled to reimbursement of its quotation preparation costs.

Regarding the costs of filing and pursuing a protest, we will allow the recovery of such costs, including attorney's fees, where the agency's actions effectively excluded the protester from the procurement, except where our Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(d) and (e); Kavouras, Inc., B-220058.2 et al., Feb. 11, 1986, 86-1 CPD ¶ 148, aff'd, FAA-Request for Reconsideration, B-220058.4, Apr. 23, 1986, 86-1 CPD ¶ 394. Since the Air Force's actions had the effect

of precluding the protester from an opportunity to compete, we also allow the recovery of American BallScrew's protest costs, including attorney's fees. American BallScrew should submit its claim for costs directly to the Air Force. See 4 C.F.R. § 21.6(f).

Conclusion

We sustain the protest and allow the protester's request for reimbursement of its quotation preparation costs and its costs of filing and pursuing the protest, including reasonable attorney's fees.

for 
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