



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Alpha Parts & Supply

**File:** B-225401

**Date:** January 15, 1987

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### **DIGEST**

1. Protest against rejection of proposal as unacceptable because of inability of protester to qualify as an alternate source under an approved source solicitation is dismissed as untimely when filed 8 months after protester knew of the reason for rejection of its technical data package, which constitutes the same basis for its protest.
2. Untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules where the issues raised have been considered by our Office on previous occasions.

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### **DECISION**

Alpha Parts & Supply (Alpha) protests the rejection of its proposal of an alternate product under request for proposals (RFP) No. DLA500-86-R-0210, issued by the Defense Logistics Agency (DLA) for 2,660 approved source replacement sleeve bearings, NSN 3120-00-343-2652, for Colt Industries, Fairbanks Morse Engine Division (Colt), engines. Alpha contends that a technical data package which it submitted for approval as an alternate source was improperly rejected for failure to contain recent Colt drawing revisions which Alpha believes may not affect the form or function of the bearings.

We dismiss the protest as untimely.

On October 17, 1985, Alpha submitted a technical data package to the DLA Competition Advocate in the Directorate of Contracting and Production (DISC). Alpha requested evaluation of its package for source approval for its sleeve bearings described as equivalent to NSN 3120-00-343-2652 (Colt part No. 16701708). Alpha's technical package included revisions 1 through 4 of drawings issued by Colt. In its cover letter, Alpha stated:

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"Although our product meets or exceeds the quality of the O.E.M. [Original Equipment Manufacturer] product, we have recently found that Colt Industries claims to have revisions to their drawings for many . . . sleeves. However, we have found there to be no significant engineering changes, but simply a re-trace of their original drawing, or a simple data change, etc."

"Since Colt Industries is not required to substantiate their revision or is not required to furnish DISC with the revised drawing, the engineering support activity would most likely find our product unacceptable because 'technically' we did not furnish the latest revision, even though the product does in fact meet Colt specifications".

. . . . .

"Therefore, we ask that you be aware of the problems we face and that should a 'revision' be mentioned by the O.E.M. that the engineering dept. look closely for a substantial engineering change."

On November 25, 1985, DLA issued the solicitation at issue, with a December 26, 1985, closing date and listing Colt as the only approved source. The RFP contained an alternate product clause providing that alternate product offers would be considered and evaluated for technical acceptability and requiring offerors to furnish drawings and other data sufficient to enable the government to determine that the product was equal to the listed approved source product.

Alpha submitted an offer for an alternate product, without any technical data package, stating in its cover letter that its technical data package was on file at DISC, and requesting the contracting activity to contact DISC to obtain the status of Alpha's alternate product.

On January 10, 1986, DISC determined that Alpha's product did not qualify as an alternate product because Alpha did not include Colt's two most recent drawing revisions. DISC could not determine if these revisions were substantive because Colt declined to provide them to DISC on the grounds that they were proprietary to Colt, and Colt had no legal or contractual obligation to provide the drawings. By letter dated February 11, DISC notified Alpha that its request for source approval had been rejected for this reason.

DLA did not notify Alpha at this time that its offer under the RFP had been rejected as technically unacceptable. However, because of the determination that Alpha was not acceptable as an alternate approved source, DLA conducted price negotiations only with Colt, which had submitted a late initial offer, on the basis that Colt was the only eligible source which had submitted an offer. Colt submitted a best and final offer on August 15. Alpha took no further action until October 14, when it spoke with DLA personnel and learned that an award to Colt was contemplated in the near future. At that time, Alpha stated to DLA that it had new information that its technical package of October 17, 1985, was, in fact, complete and accurate. On October 17, 1986, Alpha requested that DLA review its technical package, and on October 20, Alpha protested to our Office.

The "new evidence" consists of information which Alpha elicited from telephone calls on unspecified dates to a subcontractor which Alpha asserts will be Colt's supplier for the bearings under this contract. Alpha asserts that this supplier will be manufacturing the bearings to the same drawing specifications which Alpha provided in its submission to DISC, without any substantive revision. Colt has indicated that it does not procure the bearings in question from any supplier, rather it purchases a casting from a vendor, but due to the nature of many of the operations, the entire manufacturing process is performed in its factory, and that several critical operations in this process for the bearing are not indicated in the drawings which were supplied by Alpha.

DLA argues that Alpha's protest is untimely because the basis for protest was provided in February when Alpha was notified by DISC that its technical package was inadequate and, therefore, Alpha was being rejected as an alternate source. Alpha's protest was not filed until more than 10 days thereafter, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986). We agree.

Alpha's above-quoted October 17, 1985, letter to DISC stated exactly the same concerns, whether or not later revisions by Colt were substantive, which Alpha now raises in its protest. However, when DISC advised Alpha on February 11, 1986, that its application had been denied because of the failure to include these revisions, Alpha took no action.

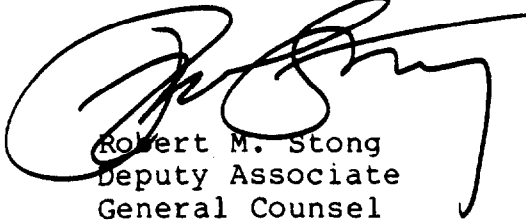
Rather, as Alpha states in its protest filed more than 8 months later, "when we received the notice of rejection dated February 11 . . . , we generally accepted this rejection because we have in the past had similar items rejected for the same reason stated by the O.E.M." Alpha contends that it was entitled to wait for specific rejection of its proposal under the RFP at issue before it knew of its basis for protest. However, this position is untenable because, in its offer, Alpha referenced its prior application with DISC as the basis for its eligibility as an approved source, and requested DLA to confirm its eligibility with DISC. Once Alpha received the DISC letter rejecting its application, Alpha was aware that its technical package was unacceptable.

While Alpha states that it expected DLA to further review its technical package before rejecting its offer, this expectation has no foundation since Alpha took no action in response to the notification that its technical package was rejected. Further, to the extent that Alpha is relying on the later evidence, obtained approximately 8 months after the rejection, the record indicates that Alpha made no earlier interim efforts to confirm its suspicions that the revisions were not substantive. Since Alpha did not diligently pursue this basis for protest, it does not provide a reason for considering the protest timely. Sun Enterprises, B-221438.2, Apr. 18, 1986, 86-1 C.P.D. ¶ 384.

Alpha also contends that the protest is timely because it raises issues which it believes are significant to procurement practices and procedures. See 4 C.F.R. § 21.2(c) (1986). We do not agree. In order to prevent the timeliness requirements from becoming meaningless, the significant issue exception is strictly construed and seldom used. The exception is limited to considering untimely protests that raise issues of widespread interest to the procurement community and which have not been considered on the merits in a previous decision. Emerson Electric Co.--Reconsideration, B-220517.2, Nov. 26, 1985, 85-2 C.P.D. ¶ 607. Here, the issue of the reasonableness of the rejection of an offer because of the unavailability to the procuring activity of proprietary manufacturing drawings which would permit evaluation and acceptance of an alternate product has been considered by our Office. NAK Engineering & Consultants, Inc., B-223719, Nov. 25, 1986, 86-2 C.P.D. ¶ 607. We have also considered the propriety of the use by contracting agencies of the kind of approved source procurements at issue here, and of the

procedures required for approval of an alternate source.  
Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 C.P.D. ¶ 2;  
Pacific Sky Supply, Inc., 64 Comp. Gen. 185 (1985), 85-1  
C.P.D. ¶ 53; Astronautics Corp. of America, B-222414.2,  
B-222415.2, Aug. 5, 1986, 86-2 C.P.D. ¶ 147. Therefore, the  
protest is not for consideration under the significant issue  
exception.

The protest is dismissed.

A large, stylized handwritten signature in black ink, appearing to read 'R. Stong', is written over the typed name and title.

Robert M. Stong  
Deputy Associate  
General Counsel