The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Diesel Services, Inc.

File: B-230107

Date: May 20, 1988

DIGEST

Contracting agency has considerable discretion in the establishment of testing procedures for alternate items in an approved source procurement and, in the absence of a showing that the agency's testing lacks a reasonable basis, the General Accounting Office will not disturb the agency's determination.

DECISION

Interstate Diesel Services, Inc. protests the rejection of its proposal under request for proposals (RFP) No. DLA700-87-R-1963 issued by the Defense Logistics Agency (DLA) for the acquisition of a quantity of plunger and bushing assemblies which have been assigned National Stock Number (NSN) 2910-00-903-0910. Interstate argues that the pre-qualification testing requirements which have been imposed upon the above-referenced NSN part are unduly restrictive and have caused the firm to be unreasonably excluded from competition.

We deny the protest.

The RFP called for the submission of offers on a unit price basis and contemplated the award of a requirements contract to furnish plunger and bushing assemblies (assemblies) manufactured either by General Motors Detroit Diesel Corporation, the original equipment manufacturer (OEM), or Korody-Colyer Corporation, the only firm currently approved as an alternate manufacturer (AM). Firms interested in submitting offers for assemblies which were not manufactured either by the OEM or AM (i.e. alternate offers) were invited to do so but were apprised that source approval may be required by the user agency, the Army Tank-Automotive Command (TACOM), prior to the award of a contract.

By closing, eight offerors had responded to the solicitation with Interstate submitting the second low offer. The offer of Interstate was an alternate offer for plunger and bushing assemblies manufactured by the firm. Based upon the firm's belief that it had submitted the low offer in response to the solicitation, Interstate contacted the contracting officer shortly after closing in an attempt to secure the award of the contract. At that time the contracting officer informed Interstate that no award to the firm could be made until its assemblies were given source approval by TACOM. Thereafter, Interstate contacted representatives of TACOM and was informed that it could not receive source approval for its assemblies until it performed extensive testing thereon. Specifically, the firm was informed that it was required to perform testing in accordance with TACOM Regulation 70-14 which essentially calls for the conduct of a test whereby the manufacturer places its offered part into an engine which is then run for a 400-hour period of time under controlled conditions. The purpose of the procedure is to insure both the reliability and design integrity of the part being tested. The protester filed in our Office after it was informed by the contracting officer that further consideration would not be given to its offer unless it received TACOM approval for its assemblies.

In its letter of protest, Interstate argues that the prequalification testing requirements required for TACOM approval of its part are unreasonable and unduly restrict competition. In support of its position, Interstate makes a number of assertions. First, the protester points out that it has previously furnished this exact part to the agency under two previous contracts. These contracts were performed during 1981 and 1982 and no prequalification testing had been required of Interstate at that time. Second, the protester points out that it manufactures its parts from OEM drawings. Thus, according to Interstate, the imposition of this design testing requirement is unreasonable since its part is designed in accordance with the OEM's specifications. In this connection, Interstate directs our attention to a letter in the record from a DLA official to TACOM dated April 8, 1985. The letter states among other things:

> "In the area of testing we feel that a more practical approach should be considered than across-the-board application of TACOM R 70-14. If an alternate design part is being considered then indeed it should be evaluated through actual performance tests. On the other hand, when an alternate offer is received that proposes simply to provide the same part from another manufacturer then we contend that we need only test to confirm that the proposed part is identical dimensionally

> and materially to the Original Equipment Manufacturers [sic] (OEM) part."

Thus, the protester suggests that TACOM should simply compare its drawings with the OEM's and test its product for conformity to those drawing. Finally, the protester argues that, if in the final analysis the agency feels constrained to require the prequalification testing currently demanded of Interstate, a similar requirement should be imposed upon all manufacturers including the OEM. According to the protester, the OEM cannot show a better record of performance for its assemblies than Interstate.

The agency responds that the NSN part in question had been classified as a "critical application" item in 1983 pursuant to the Defense Acquisition Regulation (DAR), 32 C.F.R. § 1-313 (1983), because it was being used in military combat vehicles. The agency's rationale for the classification of this NSN part states in relevant part:

> "Engine failure or problems may expose the vehicle crew unnecessarily, to hostile action, create safety problems or require acquisition of additional vehicles because some vehicles are not operable. Specifically, the plunger and bushing, NSN 2910-00-903-3011 can stick and jam the rest of the engine fuel injectors in the open position causing inability to control the speed of the engine with no way to turn it off. In cases of engine runaway of this type, unless the engine is accessible enough to cut off the fuel supply or combustion air, the engine runs till it "self destructs" and it then must be removed and overhauled at a cost of at least $6,000.00. Sticking closed causes inability to start and operate the engine, rendering the vehicle not mission capable (NMC) until the defective part is located and replaced."

Additionally, the agency notes that the entire OEM engine had been subject to extensive testing at the time it was selected for deployment and the part offered by Korody-Colyer has been subject to the prequalification test requirements outlined in TACOM Regulation 70-14.

In cases involving source-controlled procurements under DAR § 1-313, supra (now appearing at Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 17.7203 (1986 ed.)), our Office has taken the position that an agency may properly restrict the award of contracts to approved sources (but also permit alternate parts to qualify) where doing so is necessary to ensure the

procurement of satisfactory end products or the maintenance of the high level of quality and reliability necessitated by the critical application of the product in question. See, e.g., B.H. Aircraft Co., Inc., B-222565 et al., Aug. 4, 1986, 86-2 CPD ¶ 143; Hill Industries, B-210093, July 1, 1983, 83-2 CPD ¶ 59. Further, we have held that contracting agencies have considerable discretion in the establishment of testing procedures for alternate items in an approved source procurement and that, in the absence of a showing that the agency's testing lacks a reasonable basis, we will not substitute our judgment for that of the agency's. See JGB Enterprises, Inc., B-218430, Apr. 26, 1985, 85-1 CPD ¶ 479.1/

Here, we believe the agency has shown that the prequalification testing requirements demanded are reasonably related to its minimum needs and the protester has failed to show that the agency's actions in imposing those requirements are clearly unreasonable. As stated above, the item was determined to be critical by the agency, since its failure could lead to loss of life during hostile military action. The record also shows that previous to the establishment of this testing requirement, the agency merely evaluated an alternate offeror's dimensional and material drawings against the OEM's drawings; this method created many fuel injector complaints from users. Thus, the agency determined (we think reasonably) in view of the criticality of the item that the comparison of drawings (as suggested by the protester) was not sufficient to determine the operational capability of the NSN part because it is "highly stressed

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1/ The protester does not argue, and based on this record we do not find, that the procurement was subject to the Defense Procurement Reform Act of 1984 (Act), 10 U.S.C. § 2319(b) (Supp. III 1985), which requires that certain procedural steps be completed before an agency establishes a qualification requirement which is defined by the Act as a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract. Specifically, the Act exempts items for which qualification requirements were established prior to the October 19, 1984, enactment date. Here, the testing requirements and procedures were established in 1983, when the item was determined to have a critical application. Further, while 10 U.S.C. § 2319(c)(6) requires that agencies promulgate written qualification requirements prior to enforcement of a qualified products or bidders list, this section does not pertain to the procurement of approved source items; it applies only to qualified products. See Pacific Sky Supply, Inc., B-228049, Nov. 23, 1987, 87-2 CPD ¶ 504.

and select fitted" and this fit must be maintained throughout the useful life of the engine. In short, the record shows that an engine endurance test (i.e. the 400 hour test required by the agency), providing an actual operational test of the part, is eminently reasonable under the circumstances.

In its effort to rebut the agency's showing, the protester offers the letter from DLA to TACOM dated April 8, 1985. In our opinion, this single letter is insufficient to show that the prequalification requirements imposed by TACOM (the user agency) are clearly unreasonable; it merely represents the opinion of a local DLA official which was not accepted by the user agency (there are numerous memoranda and other documents in the record technically and substantively rebutting the position of this official). We therefore find the letter unpersuasive in view of the substantial evidence in the record supporting the agency's testing determination.

The protest is denied.

James F. Hinchman
General Counsel