



**The Comptroller General
of the United States**

Washington, D.C. 20548

Cunningham

Decision

Matter of: Mercer Products & Manufacturing Co., Inc.

File: B-230223

Date: June 13, 1988

DIGEST

An agency's rejection of protester's quotation offering alternate product for critical jet aircraft part is not unreasonable given the extended 230-day period needed by another cognizant agency to qualify the part, the un rebutted stated urgency of the item, and the protester's failure to submit technical drawings on its alternate part until the protest was filed.

DECISION

Mercer Products and Manufacturing Co., Inc., protests the Defense Logistics Agency's (DLA) rejection of its offer under request for quotations (RFQ) No. DLA700-88-X-C196, issued on November 30, 1987, for two linear actuating cylinder pistons for use on F-18 aircraft. Mercer's quote was rejected because the alternate products it offered needed to be evaluated, which would require additional documentation and in excess of 230 days.

Mercer protests that: (1) the proposed 230-day period for the Navy's review of its offer was violative of the requirement of the Defense Procurement Reform Act of 1984 that agencies provide prompt prequalification procedures as well as being "violative of the statutory requirement for full and open competition"; and (2) Mercer's proposal was, in fact, acceptable.

We deny the protest.

The RFQ contained a "Products Offered" clause which required quoters to state whether they were offering the "exact product" described in the RFQ or an "alternate product"; quoters were further instructed to "furnish the data required for whichever is applicable." The RFQ also stated that prospective quoters were to refer to DLA's "Master Solicitation for other requirements of this provision [i.e., the 'Products Offered' clause], e.g. data to be furnished." In DLA's master solicitation, part I, provision 4(c),

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prospective quoters were told that if an alternate product was offered, offerors were to furnish with their "offer legible copies of all drawings, specifications or other data necessary to describe clearly the characteristics and features of the product being offered" and that "data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria and other characteristics of the offered product."

Mercer submitted a timely quotation dated December 11, 1987, on an alternate product that was received by DLA on December 21, 1987. However, Mercer's quotation included no descriptive data on the alternate product.

DLA states that as "this [was] a critical application item," engineering evaluation of alternate offers needed to be done by the Engineering Support Activity of the Navy's Aviation Supply Office. DLA was informed by the Navy that evaluation of alternate offers would take in excess of 230 days. At that point in January 1988, DLA's "item manager" for the cylinder pistons reported a "yearly usage of 3 each and 1 unit on hand."^{1/} Given the long lead time for delivery--the RFQ provided for a 270-day delivery schedule--DLA determined that "it would not be in the best interest of the government to delay the award for 230 days."

On February 3, 1988, DLA informed Mercer that the company would need to submit additional documentation for evaluation of its part and that evaluation of any alternate offer would take in excess of 230 days. DLA also informed Mercer that "due to supply status and production lead time considerations," DLA had to "continue procurement" but that DLA would consider Mercer for future procurements if Mercer's part were to be approved.

Under 10 U.S.C. § 2319(b)(6) (Supp. III 1985), as added by the Defense Procurement Reform Act of 1984, Pub. L. No. 98-525, Oct. 19, 1984, 98 Stat. 2593, an agency imposing a qualification requirement--that is, a requirement for testing or other quality assurance demonstration that must be satisfied by a prospective offeror or its product in order to become qualified for an award--must ensure that an offeror seeking qualification is "promptly" informed as to whether qualification has been obtained and, if not, is "promptly" furnished specific information as to why qualification was not attained.

^{1/} DLA states that at the present time, the yearly demand for the item has increased to 10 units with no stock on hand and backorders of 10 units.

Mercer has presented no evidence that the Navy's 230-day period for approving alternate items is excessive. Mercer argues that the Air Force processes similar alternate source approval requests in a shorter time period, referencing an Air Force publication's estimate of 18 workdays to process source approval requests under \$50,000. However, that publication, which only estimates "processing" time of source approval requests, does not bind the Air Force, much less DLA or the Navy. Furthermore, Mercer has presented no evidence that would cast doubt on the stated urgency of these items.

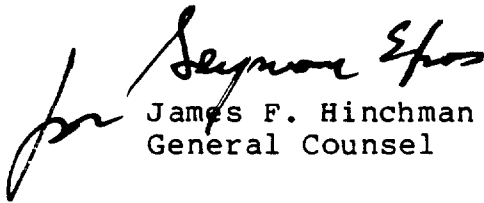
Mercer also claims the extended period of time between when it submitted its proposal on December 11, 1987,^{2/} and the date it was apprised of the rejection of its quote, February 3, 1988, constituted an unreasonable delay in furnishing Mercer with specific information why its product was not qualified. It appears that DLA could have been more prompt in apprising Mercer that its product needed to be qualified since DLA was advised on January 13, 1988, of the alternate product approval requirements.

However, this 3-week delay in notifying Mercer is not a basis to sustain the protest, inasmuch as Mercer has neither successfully challenged the 230-day approval cycle nor the urgency of this RFQ requirement. Also, Mercer was responsible for the delay by failing to submit "drawings, specifications or other data" necessary to clearly describe the alternate product being offered in its quotation. Although Mercer argues that to have submitted more information "would mean that mountains of documents would have to be delivered with each quote," Mercer did, in fact, submit 13 pages of technical materials as an attachment to its February 12 protest to our Office. DLA has asked for even more information on Mercer's product before forwarding the entire package to the Navy. Mercer's failure to submit these 13 pages of technical materials means, in our view, that the company, rather than DLA, was responsible for the delay in evaluating Mercer's product until these pages were finally submitted with its protest. Mercer's claim that other materials which it says it submitted "to the government immediately before and after it submitted the quote at issue" should be considered to meet the data requirements has no merit, since the referenced information is a mere advertising and marketing brochure that is very general in nature.

^{2/} The record shows the offer was actually received by DLA on December 21, 1987.

This case is distinguishable from Rotair Industries, Inc., B-224332.2 et al., supra, and Pacific Sky Supply Inc., B-225513, Mar. 30, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 358, the decisions relied upon the protester. In those cases, the agency was the primary cause for substantial and unreasonable delays in approving alternate products such that the affected parties were deprived of a reasonable opportunity to compete. As indicated above, that simply is not the case here.

Protest denied.

James F. Hinchman
General Counsel