



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Kitco, Inc.  
File: B-232363  
Date: December 5, 1988

---

### DIGEST

Award to low-priced, qualified source for critical aviation parts was not unreasonable where the protester failed to furnish an adequate technical data package in support of its source approval request in a sufficiently timely manner to permit the agency to evaluate protester's product and still make an award in time to maintain an adequate spare parts inventory.

---

### DECISION

Kitco, Inc., protests the award of a contract to Air Maze Corporation, under request for proposals (RFP) No. DLA500-88-R-0286, issued by the Defense Industrial Supply Center (DISC) for the supply of oil filter kits. Kitco alleges that it was not afforded a reasonable opportunity to meet the solicitation requirement for source approval prior to award. We deny the protest.

The oil filter kits, consisting of an oil filter, gasket and "O-ring", are used in turboprop engines that power Air Force and Navy aircraft. The agency considers the kits to be critical application items that are subject to exacting performance requirements and that must possess proven capabilities of precise integration with the aircraft engines. The government lacks a complete technical data package for the parts and thus is unable to provide adequate specifications to offerors. Accordingly, the initial synopsis of the procurement, published in the Commerce Business Daily on February 25, 1988, specified the part number of a previous supplier of the kits to the government, Purolator Products, Inc. In a second, revised

044064/137481

synopsis published on March 9, potential offerors were advised that specifications were unavailable and that the procurement was limited to approved sources. Only Purolator and Air Maze, a supplier of the kits to the manufacturer of the engine, were listed as approved sources in the revised synopsis and in the subsequent March 10 solicitation. Although Kitco had been listed in a January 26 purchase request as a potential source for the kit, Kitco was not approved to manufacture the filter element and could provide the kit only if it purchased the filter from Purolator or Air Maze. Nevertheless, the agency sent copies of the solicitation to Kitco and several other firms, as well as to Purolator and Air Maze, on or about March 10.

As amended, the solicitation required offerors proposing an alternate to the approved product to furnish with their offer all drawings, specifications, and data necessary clearly to describe the characteristics and features of the proposed product, including its design, materials, performance, function and interchangeability. The solicitation warned that failure to furnish the complete data required to establish acceptability might preclude consideration of the offer, and further cautioned that if the determination of acceptability could not be accomplished by the expected contract award date, the product might be considered technically unacceptable.

The solicitation provided for a June 6 closing date for receipt of proposals. On June 1, however, Kitco telexed the agency to advise that it had not received the "formal bid set" until May 31 and to request that the closing date be extended until June 14. In addition, Kitco claimed to be an approved source for the oil filter kit, stating that it had previously provided the kit to the Air Force under a 1985 contract. Although the agency extended the closing date to June 14 as requested by Kitco, it did not amend the solicitation to list the firm as an approved source. Kitco thereupon protested to the agency, again claiming to be an approved source. In addition, the firm submitted alternate proposals, offering to supply the oil filter kit with Kitco filters for \$15.29 per unit, or with Air Maze filters for \$26.25 per unit. Air Maze and Purolator offered their own oil filter kits at \$18.91 and \$23.75 per unit respectively.

On June 17, DISC requested that Kitco provide a technical data package in support of the offer of their own filter. Although Kitco was advised that the offer could not be evaluated without the data, the firm continued to maintain that it was an approved source as a result of its 1985 Air Force contract and therefore did not need to provide

technical data. The Air Force, however, informed DISC on June 30 that while Kitco was now attempting to reverse engineer the oil filter kit, the firm had never been approved to manufacture the kit; Kitco instead had competed as a dealer supplying kits comprised of parts manufactured by other firms and had received the Air Force contract only upon the stipulation that it provide Purolator or, later, Air Maze filters. On July 1, Kitco finally consented to furnish a technical data package.

A copy of Kitco's source approval request to the Air Force, dated July 10 and based upon reverse engineering the oil filter kit, was not provided by Kitco until July 13. The DISC buyer immediately requested DISC's Directorate of Technical Operations to evaluate Kitco's submission as soon as possible. On July 18, however, the DISC inventory manager, reporting that 4,853 units were on back order, requested an expeditious award so as to avoid the grounding of aircraft. In view of the critical supply situation, and since it appeared that evaluation of Kitco's technical data package would require at least another 60 days, the contracting officer determined that Kitco's offer of its own oil filter could not be considered for this procurement. On August 10, therefore, the contracting officer denied Kitco's protest. The previous contract for oil filter kits having been awarded at a price of \$28 per unit, the contracting officer found Air Maze's offer of \$18.91 per unit to be a fair and reasonable price and made award to that firm on August 12 as the low, technically acceptable offeror. Kitco thereupon filed this protest with our Office on August 19.<sup>1/</sup>

In its protest, Kitco first questions whether the agency has adequately documented its justification for establishing a qualification requirement that must be demonstrated before contract award. In any case, Kitco contends that DISC

---

<sup>1/</sup> Kitco's source approval request to DISC was referred to the Air Force which, as previously indicated, already was evaluating a source approval request based upon reverse engineering the oil filter kit. The Air Force found the technical data package submitted by Kitco to be incomplete because it included reports on Purolator's parts rather than on Kitco's parts. Kitco then promised to provide data on its parts in approximately 4 weeks. Kitco's source approval request was conditionally approved by the Air Force only on November 15.

denied it a reasonable opportunity to qualify its own oil filter kit by failing to act promptly on Kitco's source approval request.

Under 10 U.S.C. § 2319(b) (Supp. IV 1986), a contracting agency, before establishing a prequalification requirement, must prepare a written justification stating the necessity for establishing the requirement, and 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 must be limited to those no more restrictive than necessary to meet the agency's needs. 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); see Howmet Turbine Components Corp., B-224529, Feb. 13, 1987, 87-1 CPD ¶ 160.

We consider Kitco's challenge to the adequacy of the justification for the qualification requirement to be untimely. Our Bid Protest Regulations require protests based upon alleged apparent improprieties in a solicitation to be filed prior to the next closing date; other protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a) (1988). As early as its 1985 contract with the Air Force, Kitco knew that the components of the oil filter kit must be purchased from approved sources. Further, both the CBD synopsis and the solicitation issued for this procurement advised offerors of the source approval requirement. Notwithstanding this notice of the requirement, Kitco did not raise this issue in its agency-level protest, and did not raise it in our Office until August 19, more than 6 months after publication of the synopsis and 2 months after the amended closing date. Although Kitco may not have known the details of the agency justification earlier, it failed to pursue the matter diligently by seeking any necessary information within a reasonable time. See Fairchild Weston Systems, Inc., B-229843.2, et al., June 3, 1988, 88-1 CPD ¶ 525.

In any case, an agency may limit competition for the supply of parts if doing so is necessary to assure the safe, dependable, and effective operation of military equipment. B.H. Aircraft Co. Inc., B-222565 et al., Aug. 4, 1986, 86-2 CPD ¶ 143. In such cases, parts should generally be procured only from sources that have satisfactorily manufactured or furnished them in the past, unless fully adequate data, test results, and quality assurance

procedures are available. See Aero Technology Co., B-227374, Sept. 25, 1987, 87-2 CPD ¶ 301; see generally, Interstate Diesel Services, Inc., B-230107, May 20, 1988, 88-1 CPD ¶ 480 (critical parts). In view of the unavailability of a technical data package or the specifications necessary for the unrestricted procurement of the oil filter kit, and given the intended use of the kit in a critical, aviation application, we believe that DISC acted reasonably in restricting the procurement to products supplied by approved sources.

Moreover, we find that Kitco has not demonstrated that DISC failed to provide it with a reasonable opportunity to qualify its product prior to award. If anything, the record shows that Kitco itself was largely responsible for the failure of its oil filter to be qualified in time for award under this procurement. Contractors generally should seek qualification in advance, and independently of any specific acquisition action. Federal Acquisition Regulation (FAR) § 9.203(a). Kitco, however, notwithstanding the fact that it knew as early as 1985 that the components of the oil filter kit must be purchased from approved sources, only submitted its source approval request and supporting data on reverse engineering to the Air Force in July 1988, several months after this particular requirement was synopsized.

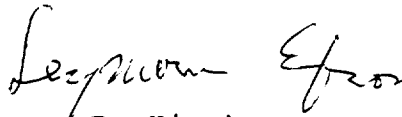

Further, although Kitco was not listed as an approved source, the firm failed either to enquire about source approval or otherwise to respond in an expeditious manner to the CBD synopses and to the copy of the solicitation mailed to the firm in March. Even when Kitco did respond to the solicitation, the firm did not provide a technical data package with its proposal as required by the solicitation; although Kitco had never been approved to supply its own oil filter, it nevertheless initially refused to comply with DISC's June 17 request for technical data, only agreeing to do so on July 1, and actually providing the information on July 13. Moreover, the technical data package Kitco did ultimately supply was found to be inadequate because it included information on another manufacturer's parts.

Under 10 U.S.C. § 2319(c)(5), an agency need not delay a proposed award in order to specify qualification requirements or to provide a potential offeror an opportunity to meet them. See Kitco, Inc., B-228045.2, Apr. 15, 1988, 88-1 CPD ¶ 369. Had Kitco promptly submitted an adequate technical data package, it appears that its oil filter might have been qualified in time for award under this procurement. In view of Kitco's lack of diligence and the critical supply situation, we think the Air Force reasonably proceeded with the award without further delaying to

complete the qualification process for Kitco. See Radalab, Inc., B-225662.2, May 15, 1988, 87-1 CPD ¶ 519; JGB Enterprises, Inc., B-225713, May 6, 1987, 87-1 CPD ¶ 481.

Kitco also alleges that DISC acted improperly in not conducting discussions with offerors. Kitco's offer of its own oil filter, however, was technically unacceptable and not susceptible of being made acceptable for this procurement; this offer thus would not have been the subject of any discussions. In any case, since the solicitation advised offerors that award might be made on the basis of initial proposals, and it appears from prior cost experience and the current competition that the award was made at fair and reasonable prices and will result in the lowest overall cost to the government, the award to Air Maze on the basis of its initial proposal was not improper. FAR § 15.610(a)(3); see Phone-A-Gram System, Inc., B-228546, et al., Feb. 17, 1988, 88-1 CPD ¶ 159.

The protest is denied.

  
 James F. Hinchman  
General Counsel