



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aircraft Instruments Company

File: B-233609

Date: March 6, 1989

DIGEST

Award to qualified source for critical aviation part was not unreasonable where the protester, which offered an alternate product, failed to furnish an adequate technical data package in support of its product approval request, and where the agency reasonably determined that time would not permit the agency to evaluate the protester's alternate product and still make an award in time to fulfill its requirements.

DECISION

Aircraft Instruments Company protests the award of a contract to Artisan Controls Corporation under request for proposals (RFP) No. DLA900-88-R-0506, an approved source solicitation issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency, for the supply of thermal flashers. Aircraft alleges that it was not afforded a reasonable opportunity to meet the solicitation requirement for approval of its alternate product prior to award. We deny the protest.

The thermal flasher is a 10-channel warning light used in military attack aircraft to alert the pilot of the position of the aircraft's landing gear. DESC has supply management responsibility within the Department of Defense for purchasing the item. The agency, lacking a complete technical data package for the item, is unable to provide adequate specifications to offerors and has approved two sources as qualified producers of the item. Further, the agency considers the thermal flasher to have critical

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application, and offers of alternate products which have not previously been approved are subject to approval by the engineering support activity, Naval Air Systems Command (NAVAIR).

On February 8, 1988, DESC issued the RFP in conjunction with a DESC master solicitation which the RFP incorporated by reference. Section B of the solicitation described the supplies being sought by listing the names of the two approved manufacturers and their part numbers. The RFP also incorporated by reference a "products offered" clause which permitted offers of alternate products that were not previously approved by NAVAIR. This clause required offerors proposing an alternate product to furnish with their offer all drawings, specifications, and data necessary to clearly describe the characteristics and features of the proposed product, including its design, materials, performance, function and interchangeability. The solicitation also stated that offerors should furnish drawings and other data concerning the exact product solicited to enable the government to determine whether the offeror's product was an acceptable equal. The solicitation warned that failure to furnish the complete data required to establish the acceptability of the alternate product 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.

Four proposals were received by the March 18 closing date for receipt of proposals. Two firms offered approved products, and two firms, including Aircraft, offered alternate products. Aircraft, which submitted the lowest priced proposal, identified its alternate product by its own part number and submitted only an Aircraft drawing with its proposal.

On April 28, the agency requested further data from Aircraft. The protester states that the DESC buyer requested a copy of a Grumman drawing, which is apparently the original equipment manufacturer's control drawing for the item. DESC states that the buyer, at the request of DESC's technical directorate, asked Aircraft to furnish complete technical data on the Grumman item in order to compare Aircraft's alternate product with the Grumman item. The protester mailed the Grumman drawing to the buyer who forwarded the data to the DESC technical directorate which, in turn, forwarded it to the Aviation Supply Office (ASO), the initial technical evaluators for NAVAIR.

By letter dated July 25, ASO informed DESC that the data package (which consisted of the Aircraft and Grumman drawings) submitted by Aircraft was deficient, and ASO specified a list of detailed information which it required in order for it to forward the data package to NAVAIR for review. The additional information identified by ASO as required included production drawings, inspection sheets, quality assurance data and other information that Aircraft had not included with its proposal. ASO also estimated to DESC that it would take 3 to 6 months for NAVAIR's technical review after ASO received a complete data package. After receipt of ASO's letter, the DESC technical directorate further advised the contracting officer that even after approval of Aircraft's technical data package, the contractor would be required to produce samples for first article testing which would require an additional 3 months for evaluation. If the first article samples passed the testing requirements, the DESC technical directorate also stated that the contractor would then become an approved source and would only then be "eligible for award."^{1/}

Because the award had already been delayed in order to accommodate evaluation of the alternate proposals, and since it appeared that evaluation of Aircraft's data package would require at least another 3 months, DESC determined that Aircraft's offer of its alternate product could not be considered for this procurement. On September 1, DLA sent a letter notifying Aircraft (which apparently did not receive the letter) that due to urgency, the agency was unable to delay the procurement for further evaluation. The September 1 letter specified the additional data the firm must submit in order for Aircraft to qualify as an approved source for future procurements for the item. This protest followed.

Aircraft first argues that the solicitation failed to inform the firm that a formal source approval was required, with technical evaluation being performed by NAVAIR, and not by DESC.

Although the RFP did not state that source approval was required from NAVAIR, we think that the RFP was sufficiently clear to put Aircraft on notice that if an alternate product were offered, it would be subject to detailed and rigorous evaluation and approval by appropriate technical personnel.

^{1/} Despite the DESC technical directorate's statement, we note that first article testing occurs after the award of a contract and would not delay an initial award of a contract containing the first article requirement.

As stated above, the RFP explicitly stated that if an alternate product were offered, offerors must furnish with their offer copies of all data necessary to clearly describe the characteristics and features of the product being offered, including its design, materials, performance, function and interchangeability. Since Aircraft knew or should have known that extensive technical evaluation would be performed on an alternate product, we think the identity of the activity within the government that would be performing the evaluation is irrelevant, especially since all alternate product offerors were subject to the same evaluation by the same personnel. We therefore find no merit to this contention.

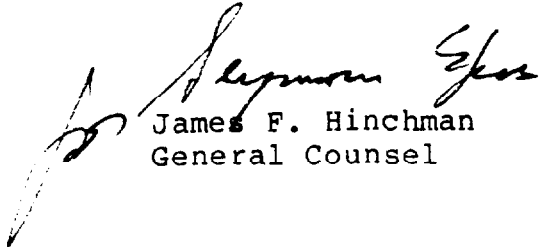
Next, Aircraft alleges that DESC failed to timely request additional technical information that was necessary for evaluation. Specifically, with respect to DESC's April 28 request for further data, the protester asserts that it was under the impression that the drawing was the only data being sought at that point in the process. Aircraft also complains that after ASO advised DESC by letter dated July 25 that additional technical information was required from Aircraft, DESC did not comply with that request but proceeded to reject the Aircraft offer and make award to another firm. In short, Aircraft complains about delay in the evaluation process. We find no merit to these contentions.

First, the record shows that Aircraft itself was partially responsible for the failure of its product to be qualified in time for award under this procurement by not submitting adequate data with its initial proposal. In light of the clear language contained in the RFP requiring that offerors furnish with their proposals sufficient documentation establishing that an alternate part they offer is, in fact, equal to the specified part, we find that Aircraft was reasonably on notice of this obligation. See Frontier Alloys & Manufacturing Inc., B-227808, July 30, 1987, 87-2 CPD ¶ 119. Here, the record shows that, at least partly as a result of Aircraft's deficient initial proposal, there was simply insufficient time to qualify the Aircraft alternate product prior to award.

Second, as the solicitation stated, an agency need not delay a proposed award to provide a potential offeror an opportunity to meet qualification requirements. Kitco, Inc., B-232363, Dec. 5, 1988, 88-2 CPD ¶ 559. Here, since the minimum needs of the agency did not permit further delay,

the agency's decision to award the contract to another offeror prior to qualification of the Aircraft product has not been shown to be unreasonable. Aircraft is free to proceed to qualify its product for future procurements.

The protest is denied.



James F. Hinchman
General Counsel