



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Purdy Corporation

File: B-235596

Date: September 12, 1989

DIGEST

1. Where agency informed offeror of amended delivery schedule when it requested a best and final offer after initial proposals failed to meet delivery schedule, it should have been clear to the offeror that it was required to meet revised schedule to be considered for award and when the firm's offer did not meet amended schedule agency was not required to reopen discussions to afford offeror yet another chance to meet the agency's delivery needs.

2. Where protester's offer was properly rejected for failing to meet the delivery schedule required by agency, General Accounting Office need not address protester's argument that approved source requirement which protester's offer did not meet is unduly restrictive of competition.

DECISION

The Purdy Corporation protests the rejection of its proposal and the award of a contract to Sikorsky Aircraft under Army request for quotations No. DAAJ09-89-Q-2039 for 180 gear spurs, a part used in the main gearbox (transmission) of the UH-60 Blackhawk helicopter.

We dismiss the protest in part and deny it in part.

On March 29, 1989, in response to an urgent need, the Army orally solicited five sources, including Purdy, for gear spurs. The agency informed those firms of the required delivery schedule of 15 parts per month starting November 30, 1989, and set the closing date for offers as April 11. Four of the solicited firms submitted quotes; none of the offers, however, conformed to the required delivery schedule.

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The Army orally requested that the four offerors submit best and final offers (BAFOs), and, since none of the firms had offered to begin delivery in November as required, the agency informed the offerors that delivery was required to start 9 months after award. All four firms submitted BAFOs. The lowest priced offer was \$4,750 each, Purdy submitted the second-lowest price of \$4,949 each, and Sikorsky was next low at \$4,975 each. Since neither the lowest priced offeror or Purdy were approved sources at the time of award, and neither offered to meet the required delivery schedule, the agency awarded a contract to Sikorsky on May 2.

Purdy protested to this Office on May 19, contending that the requirement that a firm supply a sample gear for a 200-hour endurance test in order to become an approved source for the gear spurs is excessive and unduly restrictive of competition. Purdy maintains that it has been informed by the Army of similar new test requirements on other parts that it can supply. According to the protester, it is a known manufacturer of quality, flight-safety critical parts and the repeated use of approved source requirements for these parts effectively limits all such procurements to the original equipment manufacturer and unduly restricts competition.

In response to the protest, the Army argues that since Purdy's BAFO did not offer to meet the required delivery schedule, Purdy was not eligible for award and, under the circumstances, we should not consider Purdy's protest of the approved source requirement and the award to Sikorsky. Purdy responds that the delivery schedule was not a valid basis for the rejection of its proposal because the difference between the delivery schedule that it offered and the required schedule was not significant and that by not informing Purdy of its deficient delivery schedule, the Army failed to conduct meaningful discussions. We agree with the agency that the Purdy offer was properly rejected because of the discrepancy in its offered delivery schedule.

As Purdy points out, agencies are required to conduct written or oral discussions with all responsible offerors in the competitive range, advising them of deficiencies in their proposals and giving them an opportunity to submit revised proposals. Federal Acquisition Regulation § 15.610; Teledyne Inet, B-228457.2, Feb. 22, 1988, 88-1 CPD ¶ 176. Here, the record indicates that the Army called all four offerors, including Purdy, to request BAFOs and informed

each offeror of the revised delivery schedule.^{1/} Although in the phone calls, the agency did not specifically refer to any offeror's delivery schedule as a "deficiency," the delivery schedule was the only change in the agency's needs from the initial solicitation, and we think that it should have been clear to Purdy that its BAFO was required to meet the revised schedule in order to be considered for award.

We believe that the phone call to Purdy and the opportunity to submit a BAFO met the agency's obligation to conduct meaningful discussions and the agency was not required to reopen discussions to afford Purdy yet another chance to meet the agency's delivery needs. AZTEK, B-229525, Mar. 2, 1988, 88-1 CPD ¶ 218. Although Purdy disputes the Army's need for the earlier delivery, generally a delivery schedule is regarded as a material requirement. Ford Aerospace & Communications Corp., B-200672, Dec. 19, 1980, 80-2 CPD ¶ 439. Moreover, it is clear that the Army had a need--due to a depleted supply and back orders--for delivery of the gears as soon as possible. Under the circumstances, we think the Army's refusal to again extend the delivery schedule and its decision to reject the protester's proposal because of its nonconforming delivery were reasonable.

Thus, since Purdy's BAFO did not meet the agency's requirements, the firm would not be eligible for award even if we agreed with its contention concerning the testing requirement. Therefore, we need not consider Purdy's arguments concerning that requirement. Wilkinson Mfg. Co., B-225810, Mar. 23, 1987, 87-1 CPD ¶ 333.

Moreover, the record contains the agency's explanation that the gears are critical parts the failure of which could result in a crash. The agency also states that the test is necessary to demonstrate whether a new source's part has the correct gear tooth interface and whether the gear has the correct wear patterns in operation. Although this explanation was provided to the protester it has not taken any exception to the agency's position in this regard. Based on such a record, we have no reason to conclude that the agency's testing requirement is unreasonable.

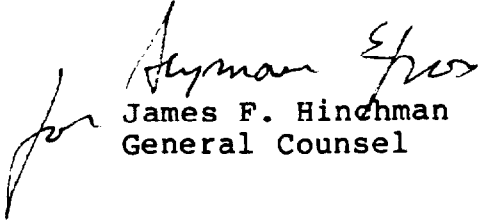
Finally, we will not consider Purdy's general complaint about the Army's decision to impose approved source

^{1/} Although the memorandum of the phone call to Purdy does not specifically mention the revised delivery schedule, the contracting official who made the call says that he advised Purdy of the revised schedule and Purdy does not deny that it was so advised.

requirements on a number of other spare parts. Under our Bid Protest Regulations, we consider protests involving solicitations already issued by federal agencies and awards made or proposed to be made under those solicitations.

4 C.F.R. § 21.1(a) (1988). Since Purdy does not refer to any other solicitations issued by the contracting agency, the agency has done nothing that can be the subject of a bid protest. Centronics Sales and Serv. Corp., B-225514, Dec. 3, 1986, 86-2 CPD ¶ 640.

The protest is denied in part and dismissed in part.

for
James F. Hinchman
General Counsel