

Ms. Curcio



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lambda Signatics, Inc.

File: B-239372

Date: July 16, 1990

Ray Lavi, for the protester.
Gregory H. Petkoff, Esq., and Charles T. Felder, Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably delayed qualification of protester's product is denied where the record shows that the protester's failure to complete a necessary test substantially contributed to the delay.

DECISION

Lambda Signatics, Inc. protests that it was not afforded a reasonable opportunity to meet the solicitation requirement for approved source status under request for proposals (RFP) No. 41608-89-R-3128, issued by the Department of the Air Force for fuel transmitters for the T-38/F-5A aircraft.

We deny the protest.

The RFP, issued on June 19, 1989, requested prices for quantities of 22, 42, and 62 fuel transmitters used to detect the amount of fuel in the fuel cells of the T-38/F-5A aircraft. The RFP specified Simmonds Precision Products, Inc. as the only approved source for the transmitters. It provided in clause M-5, "Evaluation of Proposals Submitted Based Upon Data Not Included in the Solicitation," that offers from firms not previously identified as sources for the requirement would be considered for award if certain requirements were met. The provision also noted that the Air Force did not have a complete data package for the part.

On July 19, 1989, the closing date for the receipt of proposals, Simmonds and Lambda, an unapproved source, submitted proposals. In its proposal Lambda indicated that

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complete drawings and technical data for its transmitters were currently under evaluation by the Air Force Directorate of Materiel Management. Subsequently, on July 27, the Air Force buyer notified the Competition Advocacy Office and the inventory manager that Lambda had submitted the low offer and asked the inventory manager to determine if the contract award could be delayed until Lambda's transmitters were evaluated. The inventory manager responded that the requirement was urgent and could not be delayed. Thus, while Lambda's transmitters were still being evaluated, the Air Force continued to consider Simmonds' proposal and, on January 4, 1990, concluded negotiations with the firm. Before awarding Simmonds the contract for 62 transmitters on April 11, the buyer requested a status update on Lambda's source approval and was notified that the estimated completion date was July 31, 1990. The buyer also verified that the transmitters were still urgently needed.

Lambda does not dispute the urgency of the need for the transmitters, but protests that it has been denied a reasonable opportunity to receive the award. Lambda essentially complains that the Air Force has continually delayed the qualification process, thus precluding Lambda from qualifying in time to receive an award. Lambda states that, after it submitted its qualification report in November 1989, the Air Force found, in December 1989, that Lambda was ready to undergo form, fit, and function tests and scheduled them for February 1990; however, these tests have still not been performed. Instead, according to Lambda, it received a letter from the Air Force on March 9, authorizing it to ship the hardware for testing and informing the firm that an aircraft would be available on March 12 to perform the form, fit, and function tests. Lambda reports that it shipped the hardware immediately but that the Air Force did not perform the tests, and they have now been rescheduled for July.

In response, the Air Force argues that the delay in the qualification process is the result of Lambda's failure to successfully complete all the preliminary tests that were required, rather than any delay in the form, fit, and function tests. More specifically, the Air Force reports that when Lambda submitted its test report in January 1990, Lambda had not completed one of the required preliminary tests, the explosive atmosphere test, and instead suggested that the test should be conducted by the Air Force. In a March 9 letter, the Air Force advised Lambda that it was the responsibility of the contractor to perform all qualification tests, including the explosive atmosphere test, and that an aircraft would be available for form, fit, and function testing on March 12. The Air Force further

explains that it originally considered conducting both form, fit, and function testing and flight testing before Lambda completed the explosive atmosphere test. The flight engineer, however, refused to perform the flight test before the explosive atmosphere test was completed because of the danger involved, since Lambda's transmitters had never been tested. The agency therefore decided that even though in the past it had performed form, fit, and function tests without requiring completion of the explosive atmosphere test, this time it would delay the form, fit, and function tests since Lambda could not be qualified until the flight test was completed anyway. In addition, according to the Air Force, the tests were expensive and time-consuming and Lambda had already failed them three times.

A procuring agency may limit competition for the supply of parts if doing so is necessary to ensure the safe, dependable, and effective operation of military equipment. Under 10 U.S.C. § 2319 (1988), a potential offeror may not be denied the opportunity to submit an offer and have it considered for award solely because the offeror has not met a prequalification requirement, if the offeror can demonstrate to the satisfaction of the contracting officer that its product meets the standards established for qualification or can meet such standards before the date specified for award. Howmet Turbine Components Corp., B-224529, Feb. 13, 1987, 87-1 CPD ¶ 160. Here, Lambda argues that it was deprived of a reasonable opportunity to become qualified due to delays in form, fit, and function testing by the Air Force. Lambda contends that it would have been qualified in time to be considered for award under the RFP if the Air Force had acted more promptly.^{1/}

There is no indication that the Air Force was deliberately delaying the qualification process for Lambda or otherwise acting in bad faith. Rather, the record shows that the agency was interested in having Lambda approved as a second source and in fact took part in an ongoing qualification process with Lambda. Delays resulted, however, because Lambda had not completed the explosive atmosphere test, and the agency's urgent need for the transmitters did not permit

^{1/} Lambda raised similar objections to the qualification process in a prior protest involving a solicitation for the same type of transmitters. See Lambda Signatics, Inc., B-238504, June 1, 1990, 90-1 CPD ¶ _____. To the extent Lambda incorporates in this protest its general objections to the Air Force's actions since the qualification process began, those issues were addressed in our decision denying the prior protest, and our findings will not be repeated here.

holding up award until the projected date for completion of Lambda's qualification.

Lambda acknowledges that at the time it submitted its test report in January 1990, it had not performed the explosive atmosphere test. Lambda states that while it did not object to subjecting its transmitter to this test, it lacked all the components necessary to perform the test, and, consequently, it asked the Air Force to perform the test. When the Air Force refused, Lambda agreed to have the tests performed at a certified laboratory if the Air Force would provide the necessary components and documentation. Lambda reports that the Air Force has since supplied the components, and it completed the test successfully in early June.

Lambda does not allege that its transmitters could be qualified without passing the explosive atmosphere test. Instead, Lambda complains about the delay caused by the Air Force's refusal to schedule form, fit, and function tests before the explosive atmosphere test was completed, arguing that the Air Force had previously tested its transmitters without requiring the explosive atmosphere test.

The delay in form, fit, and function testing was not the sole impediment to Lambda's qualification, however. Lambda's failure to successfully complete the explosive atmosphere testing required before flight testing prevented the firm from being approved. As explained above, the Air Force concluded that it would be dangerous to perform flight testing before Lambda completed the explosive atmosphere test;^{2/} Lambda has not challenged this position. Even if form, fit, and function tests had been scheduled earlier, Lambda could not have been qualified until after successful completion of the explosive atmosphere test and flight testing. Under these circumstances, we find that Lambda was not prejudiced by the delay in the form, fit, and function tests, and we have no basis to conclude that the Air Force otherwise improperly delayed testing Lambda's transmitters.

Lambda maintains that it could have produced and delivered the probes in 100 days, compared to the 308-day delivery schedule specified in the contract awarded to Simmonds. In addition, Lambda states that its probes are substantially lower in price than the awardee's, resulting in cost savings to the government. The delivery schedule and price Lambda

^{2/} The purpose of this test is to demonstrate that the fuel probe is incapable of enhancing conditions for explosive atmosphere in the aircraft fuel tank.

offered are irrelevant, however, since Lambda was not a qualified source at the time award was made.

The protest is denied.

for Robert T. Murphy
James F. Hinchman
General Counsel