



Comptroller General  
of the United States

Washington, D.C. 20548

*A. Perry*

## Decision

**Matter of:** Diemaster Tool, Inc.

**File:** B-241239; B-241239.2

**Date:** January 30, 1991

Paul Shnitzer, Esq., Crowell & Moring, for the protester. Major William R. Medsger, Esq., and Joshua A. Kranzberg, Esq., Department of the Army, for the agency. Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably determined not to waive first article testing requirement for current producer of item being procured where the technical data package for the item had changed to include additional inspection and documentation procedures, and the agency had experienced quality problems with the protester's product.

### DECISION

Diemaster Tool, Inc. protests the award of a contract to Donlee Precision Company under request for proposals (RFP) No. DAAJ09-90-R-0988, issued by the Department of the Army for compressor shafts used in the turbine engine of the CH-47 helicopter aircraft. Diemaster asserts that it would be the low offeror but for the contracting officer's improper determination not to waive a first article testing requirement for Diemaster's compressor shafts.

We deny the protest.

The solicitation was issued to approved sources only, including Donlee and Diemaster, because of an urgent need for these compressor shafts. As Canadian firms, both offerors

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submitted proposals through the Canadian Commercial Corporation (CCC), under the procedures set forth in Department of Defense Federal Acquisition Regulation subpart 225.71.1/ The RFP provided for the submission of both an "Offer A," which required first article inspection and approval, and "Offer B," which did not require first article inspection and approval, if waived by the contracting activity. Diemaster and Donlee submitted the following offers:

	<u>Offer A</u>	<u>Offer B</u>
Diemaster	\$3,929/unit	\$3,929/unit
Donlee	\$3,719/unit	\$3,945/unit

Diemaster also submitted a third offer which provided for an accelerated delivery schedule under Offer B, proposing to begin delivery 120 days after contract award, instead of 180 days as was specified in the RFP, at a price of \$4,681/unit. Preaward surveys were conducted on both offerors, the results of which were positive award recommendations.

Upon closer inspection of the delivery schedule contained in the RFP, the agency discovered numerous errors and therefore conducted a round of discussions with both offerors to make the necessary corrections.<sup>2/</sup> In addition, each offeror was advised that the request for best and final offers (BAFOs) would contain a request for additional offers, both with and without first article testing, based on an accelerated

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1/ As a threshold matter, the Army contends that since Diemaster is technically only a subcontractor to the CCC it therefore is not an interested party pursuant to our Bid Protest Regulations 4 C.F.R. § 21.0(a) (1990). We have recognized, however, that a Canadian firm participating in a United States government procurement through the CCC has the requisite interested party status to file a protest in our Office. See, e.g., Dohrman Mach. Prod., Inc., 69 Comp. Gen. 22 (1989), 89-2 CPD ¶ 344.

2/ Essentially the errors in the delivery schedule set forth in the original RFP involved providing for daily rather than monthly deliveries and specifying incorrect quantities for incremental delivery.

delivery schedule. In response to this request for BAFOs the following offers were received:

	<u>Offer A</u>	<u>Offer B</u>
<u>Required Schedule</u>		
Diemaster	\$3,759/unit	\$3,465/unit
Donlee	\$3,666/unit	\$3,666/unit
<u>Accelerated Schedule</u>		
Diemaster	\$8,490/unit	\$8,195/unit
Donlee	\$3,666/unit	\$3,666/unit

Under its accelerated schedule, Donlee offered to submit a first article unit immediately and to begin deliveries 180 days after award. Diemaster offered to submit a first article 7 days after award and to begin deliveries 30 days after award, with the condition that government source surveillance be waived in order to meet this accelerated schedule.

After receipt of BAFOs, the contracting officer requested the agency's Product Assurance division to determine whether first article approval could be waived for Diemaster. Only Diemaster was considered for waiver since Donlee had not previously manufactured compressor shafts for this contracting activity. Product Assurance personnel recommended that first article approval not be waived for Diemaster due to the existence of quality deficiency reports (QDRs) against the item, and because the item is a flight safety part (FSP), which means that it is essential to aircraft operation such that its failure in flight would result in catastrophic engine failure. Subsequently, the agency awarded the contract to the CCC on behalf of Donlee under its accelerated delivery schedule for Offer A.

Diemaster challenges the award of this contract on the grounds that the contracting officer improperly reversed his decision to waive first article approval for Diemaster, and that with the waiver it is the low, responsible offeror. Diemaster contends that it is improper to require that its product undergo first article testing since it has successfully

manufactured and supplied this part to the Army, and successfully passed first article tests in 1988.<sup>3/</sup>

The FAR provides, in pertinent part, that first article testing is appropriate even if the contractor previously furnished the product to the government where: "[t]here have been subsequent changes in processes or specifications; . . . [t]he product acquired under a previous contract developed a problem during its life." FAR §§ 9.303(b)(1) and (3). An agency decision to waive or not to waive first article testing for a particular offeror is subject to question only where it is shown to be unreasonable. Whittaker Technical Prods., Inc., B-239428, Aug. 29, 1990, 90-2 CPD ¶ 174. Because the waiver clause does not confer upon offerors any right to a waiver, but is for the protection and benefit of the government, we have generally been more demanding in our assessment of challenges to the denial of a waiver, requiring a clear showing of an abuse of discretion. Engineered Air Sys., Inc., B-237214, Jan. 25, 1990, 90-1 CPD ¶ 107.

In our view, the Army's decision to deny waiver of first article testing for Diemaster was reasonable, both because more stringent quality standards have been imposed and because the Army has experienced quality problems with Diemaster's product. Although Diemaster successfully passed first article testing under an earlier contract for these items, the technical data package has been subsequently revised to include additional inspection and documentation requirements in the first article test. These revisions essentially incorporated more stringent inspection of the "critical characteristics" of the flight safety part, that is, 100 percent inspection of the critical characteristic if it can be accomplished nondestructively, and each lot or batch must be

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<sup>3/</sup> On November 6, the day after a bid protest conference was held concerning Diemaster's initial protest, Diemaster filed a supplemental protest raising, for the first time, an allegation that the Donlee firm was never requalified after it was sold, as required under Federal Acquisition Regulation (FAR) § 52.209-1. While there is a question as to whether this issue is timely raised, the record reflects that subsequent to the change in ownership of Donlee, the agency and the CCC conducted a reevaluation of the company and reasonably determined that Donlee remained qualified, and that retesting of its qualification was not necessary. See Automated Power Sys., Inc., B-224203, Feb. 4, 1987, 87-1 CPD ¶ 109; Sonetronics, Inc., B-237267, Feb. 12, 1990, 90-1 CPD ¶ 178.

tested if destruction is necessary.<sup>4/</sup> Additional detailed documentation concerning the first article tests is also required to be included as part of the first article test report. Further, each manufacturing process used to produce a critical characteristic now must be documented in detail, approved and once approved, be followed without deviation unless a new approval is obtained. This too must be documented in the first article test report.

The final material change is the addition of specific tolerance requirements for the measurement equipment used to inspect the shafts. These tolerance standards were not in effect when Diemaster performed its original first article tests, and the results of the tests may be different as a consequence.

Diemaster argues that the inspection and documentation changes do not alter the manufacturing processes, blueprint sizes, or metallurgical composition of the shafts and therefore cannot qualify as "changes" of processes or specifications which the FAR provides will necessitate first article approval. The protester further argues that even though the specifications now define certain characteristics of the shaft as "critical," they were always requirements of the specifications under which Diemaster has always supplied conforming shafts, and therefore, these minor revisions cannot justify refusal of the contracting officer to waive first article testing. We disagree.

The addition of quality assurance provisions to the technical data package is a sufficient justification for requiring first article testing. See Engineered Air Sys., Inc., B-237214, supra. While Diemaster may be correct that the "critical characteristics" were always requirements of the shaft, clearly the result of reclassifying these characteristics is to mandate more stringent testing. Although Diemaster has supplied these shafts in the past and successfully completed first article testing, the inspection and documentation standards for first article approval have materially changed. Even if Diemaster's product is manufactured in strict conformance with the specification and will pass these more stringent standards, the agency has a reasonable basis to insist on testing Diemaster's product to determine whether this is true.

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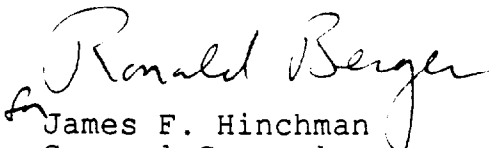
<sup>4/</sup> Statistical process control methods are acceptable in lieu of 100 percent inspection, but they must be fully documented and include control charts with action points, and are subject to government approval.

The agency's concern in this regard is reinforced by the fact that there were two QDRs against Diemaster's products, one in 1988 and another in 1990, which also provided an additional basis for the contracting officer's determination not to waive first article approval. Specifically, the earlier QDR was issued against Diemaster's product for exceeding shaft Total Indicator Runout (TIR), which is the tolerance limit for out-of-roundness condition. The second QDR was issued due to deficiencies cited in two shafts, one which exceeds the out-of-roundness tolerance and one which does not meet a minimum static elongation requirement, both of which relate to characteristics stated to be critical. This QDR was recently issued, and is not yet closed.

The protester disputes the validity of the deficiencies cited in the QDRs, alleging both that such "nonconformances" did not exist when it inspected and delivered the shafts, and questioning whether the inspection team possesses the tooling necessary to adequately test these characteristics. Diemaster also contends that the contracting officer or some other Army representative was required to independently assess the propriety of the QDRs and to consider any offsetting information regarding the alleged deficiencies in Diemaster's products.

The record demonstrates that the Army did review the QDRs in light of the current requirements, and found that the cited deficiencies related to critical characteristics. Under these circumstances, we do not believe the agency was required to do more. We do not find it unreasonable for a contracting officer to rely on information provided to him from the agency's technical personnel concerning matters of a technical nature where there is no indication that such information is incorrect. Here, the protester had not raised the propriety of the QDRs with the agency in connection with this acquisition until it filed a protest, and there is no evidence in the record which suggests that the QDRs were wrongly issued. Moreover, the record shows that the existence of these QDRs did not form the basis of the decision not to waive first article testing, but rather only bolstered the agency's conclusion that such approval was necessary due to the additional quality assurance procedures. Accordingly, we find that the agency reasonably denied waiver of first article testing for Diemaster.

The protest is denied.

  
James F. Hinchman  
General Counsel