

Perry



Comptroller General
of the United States
Washington, D.C. 20548

145001

Decision

Matter of: Rexnord Corporation

File: B-244573

Date: October 2, 1991

Hassel "Bud" Hill, Jr., Esq., for the protester.
Vera Meza, Esq., and Connie Hood, Esq., Department of the
Army, for the agency.
Henry J. Ricardo, Anne B. Perry, Esq., and Paul Lieberman,
Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest against listing of competitor's item as an approved product is dismissed as untimely where product was first approved by agency in 1984 and has been repeatedly included in solicitations since then, and protester first protested the method of approval to the General Accounting Office approximately 7 years after the approval was granted.

DECISION

Rexnord Corporation protests the terms of request for quotations (RFQ) No. DAAJ09-91-R-0537, issued by the Department of the Army for 11,583 shims, National Stock Number (NSN) 5365-00-126-4074. Rexnord, the original manufacturer of the shim, challenges the inclusion of the shim produced by Ohio Gasket and Shim (OG&S) on the approved products list.

We dismiss the protest as untimely.

Rexnord challenges the inclusion of the OG&S part on the approved products list on two grounds: (1) the Army failed to follow Defense Federal Acquisition Regulation Supplement (DFARS) § 217.7201-2(b) when it reverse engineered the Rexnord shim without first using the alternatives specified in the regulation; and (2) the Army violated 10 U.S.C. § 2383 (1988), which governs the quality control of the procurement of critical aircraft spare parts because it did not subject the OG&S part to the identical tests undergone by the Rexnord part.

The Army originally procured the OH-58 helicopter (which included the Rexnord designed component) from Bell Helicopter, as a complete system. The Army did not establish qualification standards or tests for the Rexnord component, or for any other individual component of the helicopter, under the original procurement. The Rexnord part is not protected by patent, copyright, or trademark. Through reverse engineering on the Rexnord part in 1984, the Army crafted specifications, Army Aviation Systems Command (AVSCOM) drawing 5365-OH58-001, to be used in subsequent competitive procurements. In that same year, the Army tested and approved the OG&S shims and included them on the approved products list for the part. Since 1985, the agency has been issuing competitive solicitations for these shims, under which OG&S has competed and has been awarded contracts.

Rexnord has repeatedly challenged the agency's inclusion of the OG&S part on the approved product list since 1985, through congressional inquiries and agency-level protests, the last of which was denied in 1988. Although the reverse engineering occurred approximately 7 years ago, and numerous solicitations have been issued since that time which listed OG&S as an approved supplier, Rexnord is now first filing a protest in our Office. While Rexnord's protest is nominally directed at the terms of the current solicitation, the actual basis for its protest is the propriety of the reverse engineering and the qualification of the OG&S part, which occurred 7 years ago. There have been no changes incident to this solicitation which provide any new basis to protest the agency's actions of 7 years ago.

The policy underlying our timeliness rules is to expeditiously consider procurement actions without unduly disrupting the government's procurement process. Here, Rexnord's protest in effect constitutes a request that we review government procurement actions which occurred 7 years ago. In our view, Rexnord's failure to protest the alleged violations to our Office for 7 years renders its protest untimely because it failed to raise the issues with our Office when the approval initially occurred, and the passage of time renders it difficult to reconstruct the particulars at issue. Moreover, consideration of this stale allegation would inappropriately disrupt the procurement process. In other words, we find that a protester that waits 7 years after the alleged violation to first protest to our Office is untimely. See 4 C.F.R. §§ 21.2(a), 21.3 (1991).

We also note that by asking our Office to hold that the Army should remove the OG&S part from the approved products list and void the agency specifications, Rexnord is essentially requesting our Office to direct a sole-source procurement. Consistent with the objective of our bid protest function to

ensure full and open competition, our Office generally will not review a protest that has the purpose or effect, whether explicit or implicit, of reducing competition to the benefit of the protester. Northrop Corp., Precision Prod. Div., B-234237, May 3, 1989, 89-1 CPD ¶ 423.

The protest is dismissed.



Paul Lieberman
Assistant General Counsel