



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rexnord Corporation

File: B-248553.2

Date: July 6, 1992

DECISION

Rexnord Corporation protests the terms of request for proposals (RFP) No. DAAJ09-92-R-0483, issued on a brand name only basis by the U.S. Army Aviation Systems Command, for trunnion assembly swashplates¹ for the UH-1 helicopter, Kamatics Corporation part No. KSP9001-5. This is Rexnord's second protest filed under this solicitation. Rexnord generally protests that the agency improperly excluded the firm from competing.

We dismiss the protest as untimely.

On June 4, 1991, the agency published a synopsis in the Commerce Business Daily (CBD) of the proposed award of a contract to Kamatics Corporation as the only approved source for the part; the CBD synopsis referenced note 22 which encouraged other firms that could produce the part to identify themselves by submitting expressions of interest within 45 days. The agency had earlier received a request from Rexnord by letter dated May 7 to "reinstate" its own part number YD241A for use on the UH-1; according to the protester, the Army had in the 1960s approved the Rexnord part, the only part approved by Bell Helicopter for use on civilian versions of the UH-1.

Rexnord did not directly respond to the CBD notice. On September 11, the agency responded to the protester's previous letter, declining to consider the protester as a source of qualified parts and alleging certain maintenance advantages, including a longer life for the Kamatics part and the need for lubrication of the Rexnord part, to justify its preference to continue purchase of the Kamatics part.

¹The trunnion assembly swashplate is a bearing used to change the pitch of the helicopter blades; alteration of the blades' pitch changes the direction in which the helicopter is flying.

On February 28, 1992, the agency issued the solicitation with a closing date of March 27 for receipt of initial proposals. Paragraph L.10 of the solicitation set forth qualification procedures.²

On March 27, Rexnord filed a protest with the agency asserting that there was no reason to limit competition to the Kamatics part and contending that its part was already approved for use on the UH-1 helicopter; the agency dismissed this protest as untimely. Rexnord then filed a protest with our Office.

On June 25, we dismissed this protest against the sole-source award, because the protester had not specifically submitted a timely expression of interest responding to the CBD notice. Further, we stated that even if we assumed that the protester's earlier correspondence satisfied the requirement to respond to the notice within 45 days, the protester should at the latest have filed its protest within 10 days of receipt of the September 11 letter, since it was that refusal to consider use of the protester's part that formed the basis for protest. 4 C.F.R. § 21.2(a)(2) (1992). Rexnord's protest, filed more than 6 months after it learned the basis for its protest, was therefore clearly untimely. See DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514.

On June 24, prior to the dismissal of its first protest, Rexnord filed this second protest, asserting two grounds: that the agency had failed to prepare a written justification stating the necessity for establishing a qualification requirement, in accordance with 10 U.S.C § 2319(b)(1) (1988); and that the agency had failed to specify in writing the qualification requirements that an offeror had to satisfy in order to become qualified.

This second protest is no more than a continuation of Rexnord's challenge to the sole-source nature of the solicitation, a challenge that we have already determined to be untimely. Specifically, as we previously found, Rexnord did not timely protest the proposed sole-source award to Kamatics under a brand name only purchase description with source approval. Whether the source approval represents a qualification requirement which was inadequately justified or whether such qualification requirement was inadequately expressed in writing does not affect our conclusion that Rexnord did not timely protest the proposed sole-source

²The solicitation provides that to obtain approval in conjunction with the procurement, a contractor should follow instructions on page 1 of the solicitation; the solicitation contains no such instructions.

award and may not now file a "back-door" protest against that same proposed award. Stated differently, the agency clearly stated in the CBD announcement that it would award to Kamatics unless a valid source responded and was approved pursuant to note 22. Rexnord failed to do so. Rexnord's second protest is therefore also untimely.

The protest is dismissed.

Michael R. Golden

Michael R. Golden
Assistant General Counsel