



Comptroller General
of the United States

Washington, D.C. 20548

S. Riback
147962

Decision

Matter of: Camar Corporation

File: B-249250

Date: November 2, 1992

James A. Mercanti for the protester.
David R. Hazelton, Esq., Latham and Watkins, for Warren Pumps, Inc., an interested party.
Ronald M. Pettit, Esq., Defense Logistics Agency, for the agency.
Scott H. Riback, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected firm's alternate part in acquisition limited to approved sources is denied where firm fails to provide adequate technical data package (including drawings for original equipment manufacturer's part) for agency to determine that alternate part is interchangeable with original equipment manufacturer's (OEM) part. Agency may properly require that offeror obtain OEM drawings where it does not possess sufficient technical data to conduct evaluation of alternate part.

DECISION

Camar Corporation protests the rejection of its alternate offer under request for quotations (RFQ) No. DLA750-92-Q-1891, issued by the Defense Logistics Agency (DLA) for replacement cylinders and linings for steam pumps. Camar argues that DLA improperly rejected its quote for failing to provide an adequate technical data package.

We deny the protest.

The cylinders and linings are to be used as replacement parts for existing steam pumps manufactured by Warren Pumps, Inc. While the solicitation described the parts by the original equipment manufacturer's (OEM) part number, it also contained DLA's "products offered" clause which permits firms to offer alternate products not manufactured by the OEM. Firms offering alternate products are required by the clause to furnish a technical data package which establishes

that the offered items are physically, mechanically, electrically and functionally interchangeable with the products identified in the solicitation. The products offered clause also advises offerors that the government may not have sufficient technical data on hand to determine the acceptability of an alternate product, and requests that a firm offering an alternate product also furnish drawings and other data covering the OEM product, if available.

The agency received six quotations by the RFQ's November 28, 1991, closing date, with Camar offering the lowest price. Four firms offered Warren Pumps parts and two, including Camar, offered alternate parts. Camar's technical data package was comprised of a drawing depicting its alternate parts and copies of portions of Warren Pumps drawing No. BS-1192, revision No. 4, first prepared in 1944. Based upon its review of the Camar data package, DLA determined that Camar's alternate product was technically unacceptable because Camar had failed to furnish a complete, legible copy of revision No. 7 of Warren Pumps' drawing No. BS-1192, the revision which is currently used by Warren Pumps to manufacture the part. On April 24, DLA awarded a delivery order to Warren Pumps, the firm offering the lowest price on technically acceptable parts.

Camar then filed an agency-level protest alleging that DLA had erred in rejecting its quote for failure to provide a copy of the OEM's drawing. Camar maintained in that protest that the Department of the Navy (the actual end-user of these parts) had a complete OEM drawing package adequate for DLA to evaluate its alternate part. Camar also alleged that it had successfully supplied the parts to the Navy under a prior contract and that a copy of the earlier contract could be furnished upon request. By letter dated June 18, the contracting officer denied Camar's protest, stating that the OEM drawing furnished by Camar was not identified as Warren Pumps drawing No. BS-1192, did not indicate the revision level, and was illegible and therefore unsuitable for evaluation purposes. The letter also stated that, although the Navy had copies of older revisions of the OEM drawings, its technical data package was incomplete and did not contain all current revisions of the various drawings necessary to manufacture the part. Consequently, the Navy's limited OEM technical data package had not been provided to DLA for purposes of evaluating alternate offers. The contracting officer advised that DLA would forward Camar's data package to the Navy for evaluation purposes for future consideration if Camar would furnish a copy of its drawing for the parts, as well as a legible copy of Warren Pumps drawing No. BS-1192, revision No. 7, and copies of any earlier contracts between Camar and the Navy along with evidence (such as test results) indicating Navy approval of the Camar parts. Camar then protested to our Office.

Camar contends that the agency's rejection of its alternate parts was unreasonable because it had submitted sufficient information with its quote to enable the agency to make a favorable determination of the technical acceptability of its products. The protester also maintains that the Navy has adequate technical data on hand (in the form of an OEM drawing package) to compare the Camar products with the Warren Pumps products, and consequently its failure to furnish a copy of the OEM drawing with its data package should not have been a basis to reject its quote. According to Camar, DLA did not make every reasonable effort to approve its parts prior to award of the contract to Warren Pumps.

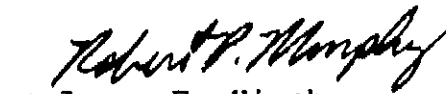
DLA responds that Camar's quotation was properly rejected because of the firm's failure to provide a copy of revision No. 7 of the Warren Pumps drawing with its technical data package. According to DLA, the government does not have a copy of revision No. 7 and also does not have any technical data rights in the drawing. In this connection, the agency notes that, to the extent that it has rights in any of the OEM's drawings, those rights are limited to use of the drawings to effect emergency repairs on ships. DLA contends that it therefore must rely upon alternate offerors to furnish OEM data for purposes of enabling the agency to determine whether the offered alternate products are interchangeable with the OEM products.

Agencies may properly restrict an acquisition to approved sources, but must provide unapproved sources a reasonable opportunity to qualify. 10 U.S.C. § 2319 (1988); Kitco, Inc., B-241868, Mar. 1, 1991, 91-1 CPD ¶ 238. Where an agency does not possess sufficient technical data to evaluate the alternate product, it may properly require a firm seeking source approval to provide data from the OEM, even where it may be difficult to obtain that information due to its proprietary nature; so long as the data are reasonably necessary to a thorough evaluation of the alternate product, we will not object to the agency's actions in requiring it. Alpha Technical Services, Inc., B-243346, July 23, 1991, 91-2 CPD ¶ 85.

We find that DLA acted reasonably in rejecting Camar's alternate offer. First, DLA properly required Camar to furnish a copy of the OEM drawing. The record shows that, as represented by the agency, the government has only limited technical data rights in an older version of the OEM's drawing and also does not have a complete, current data package for the parts. In fact, DLA needed to borrow a copy of Warren Pumps' drawing BS-1192, revision No. 7, during the pendency of this protest in order to review it while preparing its agency report.

The record also shows that the data provided by Camar for its part was insufficient to allow the agency to evaluate its alternate product. In this regard, the cognizant DLA technical personnel provided a memorandum which identifies numerous informational deficiencies in Camar's drawing which are not otherwise remedied by information contained in the firm's quote. Camar does not dispute the existence of these deficiencies and, indeed, admits that many additional drawings and procedures are necessary to successfully manufacture the parts in question. It thus appears from the record that, even if the firm had submitted a complete OEM data package, Camar's data package was insufficient for purposes of evaluating its part. Since offerors bear the obligation of affirmatively demonstrating the acceptability of an alternate product, see, Services & Sales, Inc., B-247673, June 29, 1992, 92-1 CPD ¶ 545, the burden was on Camar to provide sufficient technical data with its quote to show that its parts were interchangeable with the OEM parts. In addition, although Camar has alleged numerous times that it has previously obtained approval for its parts, it has not furnished any evidence (such as its alleged earlier contracts) to show that source approval has been granted for these parts. Under these circumstances, we find that DLA reasonably refused to approve Camar's alternate parts.

The protest is denied.


for James F. Hinchman
General Counsel