



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-249859

Date: December 7, 1992

James P. Rome, Esq., for the protester.
John P. Patkus, Esq., Defense Logistics Agency, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to provide reasonable opportunity for offeror to qualify its alternate product is denied where agency was unable to complete the requisite review in time to make an award which would satisfy its need for the specified item, for which there were a number of high priority back-orders.

DECISION

Advanced Seal Technology, Inc. (AST) protests the issuance of a purchase order to Wheeler Brothers Inc. under request for quotations (RFQ) No. DLA500-92-Q-HR38 (RFQ HR38), issued by the Defense Logistics Agency (DLA) for a quantity of mechanical seals used in centrifugal pumps, specified on an approved product basis.¹ RFQ HR38 was issued as a small business set-aside under small purchase procedures. AST contends that the agency's failure to complete evaluation of its alternate seal deprived AST of a reasonable opportunity to compete under the solicitation.

We deny the protest in part and dismiss it in part.

BACKGROUND

DLA, through the Defense Industrial Supply Center (DISC), is the procuring agency for the seal which is the subject of this protest. The Naval Sea Systems Command (NAVSEA) is responsible for the evaluation of alternate items. These

¹The listed, approved original equipment manufacturers (OEMs) for the solicited seal are John Crane-Houdaille Inc. and Aqua-Chem Inc.

evaluations are conducted in two stages. First, the alternate or "candidate" seal is subjected to a technical evaluation in which the candidate seal manufacturer's drawings are compared with the OEM's drawings, including comparison of seal component configuration and materials. Second, once an item is approved technically, it undergoes an operational test. The operational test may be waived if the candidate item is sufficiently similar to a previously approved item produced by the applying manufacturer.

DLA issued RFQ DLA500-91-T-V001 (RFQ V001) on September 28, 1991, with a return date of October 19, for quotes on 21 seals, Crane Part Number (P/N) H-SP-497-0TY1S21.625-XF91M015M. Wheeler, AST, and two other firms responded to this RFQ. In its October 9 quote, AST offered its seal, P/N CPS 1625-14 for \$200 per unit, and requested approval of its seal based on similarity to four AST seals which it expected to be reapproved by NAVSEA within a few weeks.² Once these seals were reapproved, AST intended to conform its drawings for P/N CPS 1625-14 to the four approved seal drawings. DLA was unable to evaluate AST's offered seal because of the lack of a Technical Data Package (TDP). No purchase order was issued under this RFQ.

RFQ HR38³ was issued April 7, 1992, with a return date of April 28, seeking quotes on 36 of the same seals covered by RFQ V001. The "Products Offered" clause of the RFQ provided that alternate item offerors must submit copies of drawings, specifications, or other data necessary to clearly describe the characteristics and features of the product offered. It also provided that the government would make every reasonable effort to determine acceptability prior to award, but that if it could not, proposed alternate products could be considered technically unacceptable for this procurement. Upon completion of the evaluation, the offeror was to be notified and, if the item was acceptable, it would be considered for future requirements.

²In June 1991, AST met with representatives of DISC and NAVSEA to discuss the agencies' failure to complete evaluations of its alternate seals. As a result of this meeting, AST agreed to redesign the bellows component of four of its seals, the so-called "core 4," which originally were approved as alternate items by NAVSEA in 1988. According to AST, NAVSEA agreed to expeditiously review and approve seals, to be submitted by AST on the basis of similarity to the core 4, without further testing, if they met NAVSEA criteria.

³This RFQ requirement represented a combination of RFQ V001 (21 seals) and RFQ DLA500-91-T-Q145 (RFQ Q145), return date August 3, 1991 (15 seals).

On April 24, AST sent DLA a quote of \$300 per unit. By separate letter, AST submitted a TDP for its P/N CPS 1625-14 and requested approval of its seal based on similarity to two of its core 4 seals. On May 14, the TDP was forwarded to DISC, and on May 21, forwarded to NAVSEA for evaluation. NAVSEA received the TDP on May 29. Due to 14 "high priority" back-orders, DLA determined that it could not delay the procurement to wait for completion of the evaluation.

Wheeler quoted a price of \$494.49 on Crane P/N NSP00153 as an item which superseded the P/N stated in the RFQ. On June 4, DISC verified with Crane that the quoted P/N in fact superseded the RFQ P/N. On July 20, DLA issued Wheeler a purchase order for the seals.

By letter of July 22, received July 30, DLA advised AST that a minimum of 60 days was necessary to complete review of its alternate seal and that the procurement could not be delayed. AST then filed this protest with our Office.

DISCUSSION

The Competition in Contracting Act of 1984 (CICA), requires that an agency obtain "full and open" competition in its procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (1988). When a contracting agency restricts a contract to an approved product, and uses a qualification requirement, it must give offerors proposing alternative products a reasonable opportunity to qualify. BWC Technologies, Inc., B-242734, May 16, 1991, 91-1 CPD ¶ 474; see Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2; 10 U.S.C. § 2319(b). This opportunity to qualify includes ensuring that an offeror is promptly informed as to whether qualification has been attained and, if not, promptly furnish specific information why qualification was not attained. Rotair Indus., 69 Comp. Gen. 684 (1990), 90-2 CPD ¶ 154; see Federal Acquisition Regulation § 9.202(a)(4). Failure to act, within a reasonable period of time, upon requests for approval as a source, deprives an offeror of a reasonable chance to compete and is inconsistent with the CICA mandate that agencies obtain "full and open" competition through the use of competitive procedures. Rotair Indus., Inc., B-224332.2 et al., Mar. 3, 1987, 87-1 CPD ¶ 238.

AST contends that, as in BWC Technologies, Inc., supra, the government's delay in evaluating its seal violates the applicable procurement statutes and regulations governing the qualification of new sources. AST also contends that by effectively thwarting AST's right to compete, the government has violated the CICA mandate for "full and open" competition. We disagree.

In BWC, the agency had a sample of the protester's alternate product for close to 2 years without testing it. We found that this action was inconsistent with the statutory and regulatory requirements for prompt qualification procedures. In sustaining the protest, we recommended that the agency complete testing on the alternate products and that if the protester's or another offeror's products successfully passed the tests, to award the contract to the low priced, technically acceptable offeror. AST's treatment here is substantially different.

AST submitted a TDP for its P/N CPS 1625-14 in late April 1992, and DISC forwarded it to NAVSEA 3 weeks later. DISC requested a priority review of the seal (60 days) and specifically advised NAVSEA that the seal was offered as similar to two previously approved AST seals.⁴ According to a September 1992, NAVSEA memorandum, staff and resource limitations and a backlog of work prevented it from commencing evaluation of AST's seal. The memorandum also stated that NAVSEA had exhausted its funds for outside contractor evaluation and "has not had the opportunity to evaluate any offers in the recent past." Further, AST does not dispute DISC's assessment that, due to the number of high priority back-orders for the seal, issuance of a purchase order could not be delayed further to await the evaluation. While AST contends that DLA's conduct reflects a lack of advance planning, the record shows that DLA held up the purchase order from August 1991, until July of 1992, which in fact, demonstrates advance planning. Since the government had less than 3 months from when AST submitted its TDP to evaluate AST's product, we find no basis for concluding that the government unreasonably delayed evaluation of AST's alternate seal.

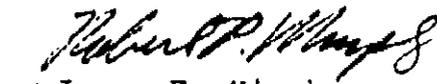
AST also contends that Wheeler was accorded preferential treatment when DLA accepted Crane's oral assurance that the P/N quoted by Wheeler superseded the P/N called out in the RFQ. AST argues that DLA should have required Crane to submit appropriate drawings and information to establish the interchangeability of the two Crane P/Ns. This ground of protest is untimely. To be timely, a bid protest must be filed within 10 working days after the basis of protest is

⁴Although a seal which meets NAVSEA criteria for similarity may be approved more quickly than one which does not, approval based upon similarity is not automatic. Further, "similarity" approval concerns only the operational test requirement. According to NAVSEA evaluation guidelines, prior to reaching the operational test, an alternate item's drawings and specifications must still be fully evaluated to establish its interchangeability with the OEM seal.

known or should have been known, Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1992). AST learned of the alleged preferential treatment from the agency's September 22, 1992, report. However, AST first raised this issue in its comments filed on October 13, more than 10 working days after its receipt of the report.

In any event, we note that the allegation lacks merit. The qualification requirement here is intended to ensure that any alternative product is interchangeable with the OEM's seal. We find nothing improper in the agency's verification from the OEM that the approved OEM P/N had been superseded by a new P/N. This inquiry is different in kind from information required in conjunction with the qualification of an alternate product.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel