



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Classic Manufacturing

File: B-249776

Date: December 14, 1992

Edward Cline for the protester,
Gail L. Booth, Esq., Defense Logistics Agency, for the
agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

In a negotiated procurement for a critical, source approved item, the procuring agency unreasonably failed to provide to the using agency, which conducted all source approval evaluations for critical items, the protester's technical drawings for its alternate product that the protester provided in its best and final offer in response to the agency's discussions, and the agency thereby deprived the offeror of an opportunity to qualify its product to compete for award.

DECISION

Classic Manufacturing protests the award of a contract to Westwater Supply-Springfield, Inc. under request for proposals (RFP) No. DLA750-91-R-0975, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA) for vanes and wear assemblies. Classic complains that it was denied an opportunity to compete because the agency did not timely consider Classic's requests for source approval of its alternate product.

We sustain the protest.

The RFP was issued on September 30, 1991, for a basic quantity of 1,230 vanes and wear assemblies for 2-inch rotary pumps, national stock number (NSN) 4320-00-566-0787 (-0787) (also described as Dover Corp. part number 091410), to be delivered within 180 days after award. The RFP also provided for the award of an option quantity of up to 1,230 additional vanes.

The vane and wear assemblies are a component of fuel pumps used on various Department of the Navy cruisers, destroyers and aircraft carriers. The vanes are fitted on a shaft and

designed to fit tightly within the fuel pump, and function by propelling fuel through the pump. The Navy uses a number of different sized vanes (each identified by a different NSN) in various fuel pumps, but all of these vanes are basically identical, apart from their dimensional differences. Because the vanes are essential components of the fuel system that operates the Navy's vessels, they are considered by the Navy to be critical items, and the RFP so informed offerors. Consequently, the Navy is required to approve all sources of the vane. Dover, the original equipment manufacturer (OEM) for the vanes, is the only approved source.

Offerors were informed that detailed specifications and technical data were not available for the Dover part,¹ but that offerors could offer alternate products under a standard "products offered" solicitation clause. Under this clause, offerors of alternate products were required to submit all drawings, specifications, or other data necessary to establish that the alternate product was either identical to or physically, mechanically, electronically, and functionally interchangeable with the specified brand name product. The solicitation contemplated an award to the lowest-priced, technically acceptable, responsible offeror.

DLA received four offers, including Classic's, by the November 27 closing date for receipt of proposals.² Classic's offer of an alternate product was lowest-priced, while two other firms offered the Dover part at higher prices. Classic stated in its initial proposal that it had reverse engineered the Dover part under DLA's Replenishment Parts Purchase or Borrow (RPPB) program³ and submitted its own drawing. Inexplicably, DLA found Classic's proposal to be technically unacceptable because the firm failed to provide a copy of the OEM's drawing. During discussions Classic informed DLA that it had reverse engineered the vane so that the OEM's drawing was not necessary and provided DLA with its detailed drawings of the vane. DLA neither evaluated Classic's drawings nor forwarded them to the Navy for evaluation. On March 17, 1992, DLA again found Classic's

¹Detailed drawings and specifications for the vane are considered proprietary by Dover.

²One firm offered the wrong part and received no further consideration.

³DLA, under this program, sells or bails qualified brand name products to potential alternate sources, so that these sources can develop technical data packages for their alternate products to seek source approval and compete for awards.

alternate product to be unacceptable because Classic had not provided a copy of the OEM's drawing, and because the part was a critical item that required the Navy's source approval, which could not be obtained within the time permitted so as to maintain acceptable stock levels of this part.

On April 21, award of a contract was made to the next lowest-priced offeror, Westwater. Classic then protested the award to DLA. After the denial of its agency-level protest, Classic timely protested to our Office on August 10.

The crux of Classic's protest is that it was denied an opportunity to compete for award under the RFP by the government's failure to timely qualify its alternate product. Specifically, Classic complains that it has been seeking source approval for its alternate product, NSN -0787, since 1989, when it sought access to the Dover part through DLA's reverse engineering program, but that DLA and the Navy have failed to timely provide information concerning the necessary qualification requirements and to act on Classic's applications for source approval.⁴ Finally, Classic argues that it has submitted sufficient information to DLA and the Navy to allow source approval, and the Navy has unreasonably failed to qualify its alternate product.⁵

⁴Classic has tried to supply alternate vanes at least since 1987, when Classic was approved by DLA to provide two other sized vanes, NSN 4320-00-713-3873 (-3873) and NSN 4320-00-337-0062 (-0062). DLA's approval of Classic alternate vanes was based upon DLA's mistaken determination that the vanes were not critical items. Subsequently, DLA rescinded its approval of Classic vanes, NSNs -3873 and -0062, and Classic was informed that its vanes would have to be approved by the Navy. The Navy has yet to approve any of Classic's vanes.

⁵Classic also protests that the vanes should not be considered critical items that require the Navy's source approval. This protest allegation is untimely. The record shows that Classic has known since 1989 that DLA and the Navy considered these vanes to be critical items that required the Navy's source approval. In addition, the RFP, informed offerors that the vane, NSN -0787, was a critical item. Accordingly, this protest allegation concerns an apparent alleged solicitation impropriety that Classic was required to protest prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1992). Since this protest allegation was not filed until after the closing date for receipt of proposals under the RFP, it is untimely and will not be considered.

The Competition in Contracting Act of 1984 (CICA) requires agencies to obtain full and open competition in their procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1) (1988). Accordingly, when an agency restricts contract award to an approved source, it must give nonapproved sources a reasonable opportunity to qualify. 10 U.S.C. § 2319(c)(3); BWC Techs., Inc., B-242734, May 16, 1991, 91-1 CPD ¶ 474. This includes informing a potential offeror of the requirements that must be satisfied in order to become qualified, acting promptly on requests for qualification, and if qualification is not obtained, promptly furnishing specific information to the potential offeror as to why qualification was not attained. 10 U.S.C. § 2319(b).

The record shows that in June 1989 Classic requested that DLA, pursuant to its RPPB program, provide Classic with the Dover part, NSN -0787, which would allow Classic to reverse engineer the part and prepare a technical data package for its alternate product. DLA informed Classic that prior to approving a bailment of the Dover part, the firm would first have to obtain the qualification requirements for the vane from the Navy. Classic promptly requested this information from the Navy. Despite repeated inquiries from both Classic and DLA, the Navy did not respond to Classic's request until nearly a year later, when the Navy informed Classic in May 1990 that to obtain source approval for any of the various vanes the firm would need to provide: (1) detailed drawings showing all dimensions, tolerances and materials; (2) test results demonstrating a determination of acceptable swell dimensions;⁶ (3) rotor slot dimensions; and (4) approved military standard MIL-I-45208 inspection procedures. In June 1990, Classic submitted swell test results and dimensions for a different vane, NSN -3873, and stated that its inspection procedures were pursuant to MIL-I-45208, but did not provide a detailed drawing or rotor slot dimensions. Classic apparently did not submit, at that time, a technical data package for the vane, NSN -0787. Nevertheless, in June 1990, Classic received access to the Dover part, NSN -0787, at DLA.

⁶The Navy states that it had experienced difficulties with the Dover vanes swelling when exposed to sea water or sea water contaminated fuel that interfered with the vane's movement in the fuel pump. Since Classic was offering vanes made of the identical material as Dover's, the Navy required a swell test and development of maximum swell dimensions. Dover's acceptable swell dimensions, as well as its swell testing procedures, are considered proprietary.

The record does not show any further communication between Classic and either DLA or the Navy concerning the qualification of Classic's alternate product until June 1991, when Classic complained to DLA that it still had not received source approval for its item. DLA informed Classic in June 1991 that Classic had still not provided the Navy with a complete data package to allow for source approval. After the RFP was issued on September 30, 1991, Classic requested information from the Navy and DLA that would permit Classic to view the appropriate rotors to obtain rotor slot dimensions. Classic did not receive access to the rotors until January 1992, after the closing date for initial proposals.

In response to DLA's request for best and final offers (BAFO), Classic submitted detailed drawings of its offered alternate product to DLA on January 29. These drawings provide dimensions and tolerances for Classic's alternate product, including maximum swell and rotor slot dimensions. Classic also mailed a complete data package, including the drawings, to the Navy on January 28. The Navy contends that it never received Classic's data package. DLA did not evaluate the Classic's drawings or provide them to the Navy for its evaluation until September 1992, well after Classic's proposal had been rejected and after Classic's protest was filed with our Office.

We have been informed that the Navy rejected Classic's drawing for this vane, NSN -0787, on November 5, because of Classic's drafting practices and numbering system for its drawings. In part, the Navy found Classic's drawings to be inadequate because they did not include a parts list with applicable materials and specifications, the number of Classic's inspection procedures was not referenced, the drawings used fractional dimensions (rather than decimal) and did not use geometric tolerancing and dimensioning pursuant to ANSI [American National Standards Institute] Y14.5M (1982), and the drawings lacked a general note that requires the breaking of all sharp edges. Apart from questioning Classic's drawing, the Navy apparently has accepted Classic's other technical information concerning its alternate product, e.g., its swell dimensions, rotor slot dimensions and inspection system.

While the record indicates that the Navy could reasonably find that Classic's alternate product drawing was unacceptable, we find that DLA and the Navy failed to (1) timely inform Classic of the necessary qualification requirements for the vanes; (2) promptly consider source approval information that Classic submitted; or (3) promptly and specifically inform Classic of the further information that was required to be submitted for qualification. Since June 1989, Classic has sought to acquire a Dover part from

DLA under its RPPB program and has attempted to obtain information from DLA or the Navy regarding the qualification requirements for the vane; the Navy and DLA, however, have failed in this 3-year period to timely respond to Classic's requests. Rather, Classic was forced to make repeated attempts for information and access to the Dover part before either agency would act. DLA's and the Navy's failure to process Classic's request for product approval during this three year period is particularly troubling since Dover is the only approved source for the vanes.⁷

With regard to this RFP, DLA unreasonably failed to forward Classic's drawing to the Navy for its source approval evaluation for nearly 8 months. Although the agency contends that Classic had not provided adequate data to justify forwarding the source approval package to the Navy, the record shows Classic had provided all requested data with its proposal or BAFO. If the drawing had been timely forwarded to the Navy during DLA's consideration of Classic's proposal, we think that Classic could well have satisfied the Navy's concerns about its drawings during the 3 months after their submission and prior to award to Westwater. In this regard, the Navy was able to evaluate Classic's drawings within a month of receipt, and its rejection of Classic's drawing appears to be more procedural than substantive;⁸ that is, the stated deficiencies in Classic's drawings concern alleged drafting errors that are well defined and appear easily correctable and the Navy no longer contends that Classic's vane is not functionally interchangeable with Dover's part.

By failing to reasonably inform Classic of the necessary requirements for qualification of its product and to promptly consider its applications for qualification, DLA and the Navy have deprived Classic of a reasonable opportunity to qualify its alternate product to compete for award. BWC Techs., Inc., supra.


Because the basic quantity of vanes has already been delivered, we do not recommend that DLA terminate Westwater's contract for the convenience of the government. We do recommend that prior to the exercise of the contract option and prior to the award of any future contracts for this vane, NSN -0787, or the other vanes, NSNs -3873 and -0062,

⁷Procuring agencies are generally required to actively solicit alternate sources through publication in the Commerce Business Daily where, as here, there are fewer than two qualified sources. See 10 U.S.C. § 2319(d)(1)(A).

⁸There is no evidence that Classic's vanes could not be approved.

Classic be given a fair and reasonable opportunity to qualify its alternate product. This means that Classic should be informed of all the requirements that its alternate products have not yet satisfied and be given a full opportunity to respond. We also find that, since the basic contract quantity has been delivered, that Classic is entitled to be reimbursed for its costs of proposal preparation. 4 C.F.R. § 21.6(d)(2). In addition, Classic is entitled to recover its reasonable cost of filing and pursuing the bid protest. 4 C.F.R. § 21.6(d)(1). Classic should submit its certified claim for its protest costs and proposal preparation costs directly to DLA within 60 working days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.


for Comptroller General
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