

Matter of: Electro-Methods, Inc.
File: B-255023.3; B-255023.4
Date: March 4, 1994

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DIGEST

Protest that agency unduly delayed processing protester's source approval request (SAR) for flight critical item, thereby precluding protester from competing, is denied where the agency could not approve protester due to lack of technical data package necessary to develop competitive specifications or precise prequalification requirements, and in any case, even with prompt completion of initial technical review of SAR, time required for necessary first article test, engine test, flight testing, delivery of production units, and production lot test inspection precluded award to protester in time to meet agency delivery requirements.

DECISION

Electro-Methods, Inc. (EMI) protests the award of a contract to General Electric Aircraft Engines (GE) under request for proposals (RFP) No. N00383-93-R-0185, issued by the Naval Aviation Supply Office (ASO), Department of the Navy, for afterburner flameholders, P/N 6046T17G13 (revision DF of National Stock No. 7RE2840-01-142-8818 TN). EMI alleges that the Navy unreasonably delayed and denied approval of the firm as a source for the part.

We deny the protest.

The afterburner flameholders being procured under RFP-0185 are used in F404 jet engines on the F-14 and F-18 aircraft to enable and control afterburner ignition by using 12 airfoil-shaped partitions to impart a controlled swirl to

the gases passing through the flameholder. The manufacturing and positioning of these partitions is critical to the performance of the afterburner flameholder. The afterburner flameholder is classified as a flight critical item because a failure of the flameholder to function properly could result in a failure of the afterburner flame to light, "flameout" of an already lighted flame, damage to or failure of the flameholder itself, damage to or failure of the afterburner liner, and failure to achieve optimum thrust. A catastrophic failure of the flameholder during operation could significantly endanger flight safety and could cause loss of the aircraft.

As noted in the Commerce Business Daily (CBD) synopsis of the procurement, published on January 27, 1993, the Navy determined that it did not possess sufficient technical data to support full and open competition for the flight critical item; accordingly, the CBD synopsis and the RFP, issued on February 19, indicated that award would be restricted to approved sources. At the time of the solicitation's issuance, GE and Danville Metal Stamping Company were the only approved sources. (GE was the original equipment manufacturer (OEM) for the F404 engine, while Danville produced the part for the second qualified source for the engine, Pratt & Whitney.) While the CBD synopsis indicated that other potential sources might be considered if they submitted source approval requests (SAR) containing the information detailed in the U.S. Navy ASO Source Approval Information brochure, offerors were cautioned that the time required for approval of a new source is normally such that award cannot be delayed pending approval of a new source. Award was to be made to the "low, qualified responsive offeror that [could] meet the government's required delivery schedule."

Prior to the current procurement, EMI had sought approval as an alternate source in a SAR submitted to the agency on August 27, 1992, under a predecessor solicitation for the same item, RFP No. N00383-92-R0-E497. In response to that request, ASO advised the firm by letter dated October 5, 1992, that its SAR package lacked both necessary data concerning inspection methods and the engineering master model--No. 1000T21P01--utilized by GE in the manufacture of the flameholder. (The master model is a template used in lieu of dimensional data to manufacture the flameholder's airfoils to precise shapes and contours; because of the criticality of the airfoils to the function of the flameholder, it is vital that the airfoils be produced exactly in accordance with the master model.) Although EMI responded by "verifying possession of the submaster 1000T21P02, which is a duplicate master provided to F & B Manufacturing Company by GE in order to manufacture the partitions," EMI's August 27 SAR ultimately was returned

without approval. By letter dated February 3, 1993, ASO explained to EMI that the Navy had been unable to obtain the GE master model No. 100T21P01. (Although the agency had attempted to obtain the master model from GE by letter dated January 20, 1993, GE questioned whether the Navy held rights to the data, and stated that, if not, GE would be reluctant to aid another manufacturer to become competitive.) The February 3 letter also advised that the Navy was in the process of a design change for the flameholder due to in-service fleet durability problems, and requested that EMI resubmit its SAR when the master model was available and design changes had been completed.

When RFP-0185 was issued 2 weeks later, the Navy had still not obtained the master model or completed design changes; the RFP thus requested the item without the design changes referenced in the February 3 letter. EMI submitted a new SAR on February 24, 1993, and submitted its proposal on March 19. EMI requested approval based on manufacturing similar items. In addition, EMI certified on February 25 that it could obtain the master model upon award of a contract; subsequently, after an inquiry by ASO, EMI furnished a "drawing" for the master model and a letter dated March 25 from F & B stating that F & B would make the master model available to EMI upon award.

Meanwhile, the Navy had received five proposals by the solicitation's original March 22 closing date--two from approved sources for the item, GE and Danville, and three from unapproved sources, including EMI, which submitted the second low offer. Since the low and second low offers were from unapproved sources, the contracting officer requested information from the agency's source development division regarding whether source approval could be granted without the benefit of the master model and, if not, what efforts had been made to obtain the master model, and regarding the time frame for obtaining the master model. The response received was that source approval could not be granted to any firm which did not have access to and/or possession of the master model, and that any source other than the approved sources would be required to undergo first article and related testing. An estimated 315 days (from April 23) would be needed to complete the initial technical review of EMI's SAR, and another 660 days would be required to produce first article units, complete first article testing, complete engine and flight testing, and to deliver and inspect the initial production units.

ASO was concerned that the "drawing" furnished by EMI consisted of only one page without any specific detailed dimensional data describing the master model, and actually questioned F & B's right to use under a subcontract with EMI the master model F & B had received from GE. Nevertheless,

the agency relied on the certification of availability provided by EMI and F & B for purposes of continuing the SAR review, and forwarded EMI's SAR to Naval Air Systems Command (NAVAIR) on May 28.

On August 5, the agency issued amendment No. 0003, which notified offerors which had not previously passed first article and production lot testing that they would be required to pass those tests, as well as engine and flight tests, and that for evaluation purposes test costs totaling \$703,400 would be added to their offers. In addition, the amendment revised the solicitation to afford the agency the option to award a contract with 1 base year and 2 option years, rather than the 3-year base contract period provided for under the solicitation as issued. The amendment also established a new closing date of August 20 for receipt of proposals.

The agency received four offers by the amended closing date. EMI's revised offer was low (even after the addition of testing costs), and GE's was second low. EMI's source approval request was still pending at this juncture, however, and the agency determined that the firm could not be approved within the lead time of the subject procurement. Specifically, given its current stock of the item, and after taking into account deliveries due under current contracts, the Navy determined that it would be in a negative stock position beginning in the October/November 1994 period. However, even apart from the time necessary to complete the initial technical review of EMI's SAR (again, estimated as 315 days), the agency calculated that an additional 660 days--that is, no earlier than approximately July 1995--would be required for EMI to: furnish first article test samples, perform the first article test, perform the required engine test of the EMI flameholder, perform the required flight testing, deliver production units, and perform production lot test inspection. Since the agency's minimum needs mandated that initial delivery of production units commence not later than October/November 1994, award was made to GE, the approved source which was the next low offeror, on September 15. However, since there was a possibility that a currently unapproved source such as EMI could obtain source approval within the 3-year contract period, the award to GE was made on the basis of a 1-year base period with two 1-year options (rather than on the basis of a 3-year base period).

By letter dated October 20, ASO notified EMI that its SAR was rejected based on the incomplete and inadequate data possessed by the Navy and submitted by EMI. Specifically, the agency notified EMI that the following was lacking or present in insufficient detail: (1) data supporting the master model; (2) "specific data required for the

installation of the [airfoils] , . . and methods required to be used to insure proper positioning"; and (3) "specific orders of operations and other detailed manufacturing information necessary to produce a . . . flameholder which will function properly through the entire operating envelope of the engine and provide reliability equal or in excess of the current approved sources' flameholder." In this regard, the Navy advised EMI that it was currently working with GE to update the flameholder drawing package and that it expected this drawing review to be completed in the fall of 1994. The agency further advised EMI that the drawing deficiencies, along with difficulties encountered with the flameholder during the alternate sourcing of the F404 engine, indicated that approval on the basis of manufacturing similar items (as EMI had requested) was not acceptable for the item, and that qualification testing would be necessary prior to approval. The agency also advised EMI that design changes were in progress for the part and that testing for the changes was also expected to conclude in the fall of 1994. Finally, the agency advised EMI that when the revised flameholder data package is complete, NAVAIR will provide detailed alternate source qualification requirements to ASO for initiating prequalification testing.

In its protest of the award to GE, EMI essentially argues that the Navy failed to make reasonable efforts to approve EMI's proposed part. Specifically, EMI contends that the Navy failed to promptly act on the firm's SAR and to advise the firm as to whether source approval was achieved, in violation of applicable procurement statutes and regulations governing the qualification of new sources. EMI believes the circumstances here indicate a lack of advance procurement planning which frustrated EMI's right to compete.

When a contracting agency restricts contract award to an approved product, and imposes a qualification requirement, it must give unapproved sources a reasonable opportunity to qualify. 10 U.S.C. § 2319 (1988); Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2; Advanced Seal Technology, Inc., B-249885.2, Feb. 15, 1993, 93-1 CPD ¶ 137. This opportunity to qualify includes ensuring that an offeror is promptly informed as to whether qualification has been attained and, if not, promptly furnishing specific

¹Indeed, the Air Force has reported that there have been deficiencies in the manufacture of a similar EMI flameholder which led to durability problems; in this regard, EMI's source approval to manufacture this similar flameholder for the Air Force, which it had cited to support its SAR here, was revoked on May 14, 1993.

information why qualification was not attained, Rotair Indus., 69 Comp. Gen. 684 (1990), 90-2 CPD ¶ 154; see 10 U.S.C. § 2304(a)(1)(A); Federal Acquisition Regulation § 9.202(a).

An offeror has the burden of demonstrating its qualification and the acceptability of alternate products. Sterling Mach. Co., Inc., B-246467, Mar. 2, 1992, 92-1 CPD ¶ 253. Since the procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of a product and the qualifications of the offeror, we will not disturb an agency's technical determination in this regard unless it is unreasonable. Service & Sales, Inc., B-247673, June 29, 1992, 92-1 CPD ¶ 545.

EMI has not demonstrated that the data reasonably available to the agency was sufficient to determine the acceptability of EMI's alternate item and qualify EMI. As an initial matter, we note that it is not apparent from the record whether the F & M submaster model EMI proposed to use was the equivalent of the master model--it was not the same number as the master model--or whether EMI in fact would have access to the submaster model, which apparently was furnished to F & M by GE for use under its contract with GE. In any case, apart from the question whether the required master model would be available to EMI, the record indicates that additional detailed information, necessary to assure the proper manufacture of reliable afterburner flameholders, was unavailable to either ASO or EMI. For example, EMI was found to lack information concerning specific orders of operations and other detailed manufacturing information necessary to produce a proper functioning afterburner flameholder, as well as the specific data required for the installation of the airfoils and their proper positioning. As for EMI's claim of qualification on the basis of having previously produced similar items, we believe that in view of the reported durability and reliability problems associated with EMI's Air Force flameholders, and the Air Force's revocation of EMI's source approval, ASO reasonably eliminated the possibility of approving EMI as a source based on similarity of prior manufacture.

There also is no basis for concluding that any alleged lack of advance planning or undue delay in processing EMI's SAR resulted in prejudice to the protester. In this regard, EMI's most recent SAR was submitted on February 24, 1993, only 8 months prior to its rejection. Although it had previously submitted a SAR on August 27, 1992, as explained above, that SAR was returned without approval on February 5, 1993, due to the lack of the required GE master model and planned design changes for the flameholder due to in-service fleet durability problems. Again, however, even apart from

the time necessary to complete the initial technical review of EMI's SAR, which was estimated to total 315 days, the agency calculated that an additional 660 days would be required for EMI to furnish first article test samples, perform the first article test, perform the required engine test of the EMI flameholder, perform the required flight testing, deliver the production units, and perform production lot test inspection. Since initial delivery of production units was required to commence no later than October/November 1994, approximately 600 days after submission of EMI's second SAR, it appears EMI could not have met the initial delivery requirements even if the SAR had been approved immediately upon submission. See Rotair Indus., supra. We conclude that there is no basis for finding that ASO proceeded improperly in reviewing EMI's SAR.

EMI also questions the necessity for prequalification engine and flight testing, but its protest in this regard was not filed until November 3, 1993, nearly 2 1/2 months after the new closing date established by amendment No. 0003, which added a requirement for engine and flight testing for offerors--such as EMI--who had not previously passed first article and production lot testing. EMI's challenge to the necessity for such testing is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993). In any case, the need for testing generally is a matter within the competence of the procuring agency; we will not disturb the agency's position in this respect in the absence of clear evidence indicating the position is unreasonable. See Hill Aviation Logistics, 67 Comp. Gen. 244 (1988), 88-1 CPD ¶ 140. Here, the agency reports that in operation the flameholder is subject to fluctuations in air flow, air pressure, temperature and gravitational--"g" force--pull, which cannot be entirely simulated in the laboratory; it must be tested in flight to assure that the flameholder will function properly throughout its entire required operating envelope. More generally, given the endurance and reliability problems previously associated with the afterburner flameholders, and the specific report from the Air Force that EMI had previously furnished deficient flameholders (with EMI's

source approval ultimately being revoked), we see nothing unreasonable in ASO's determining² to require prequalification testing for EMI.

The protest is denied.

Robert P. Murphy
Acting General Counsel

²Although EMI further argues that the award to GE was not in accordance with the solicitation because the contract does not require GE to undergo first article and production lot testing, the solicitation only required first article and production lot testing where an offeror had not previously passed such testing, and the agency reports that GE, as the OEM for the entire F404 engine, including the flameholder, had successfully completed the equivalent of such testing for the F404 engine qualification.