153569

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Warren Pumps, Inc.

File: B-258710

Date: February 13, 1995

David R. Hazelton, Esq., and Michael J. Guzman, Esq., Latham & Watkins, for the protester.
Richard D. Lieberman, Esq., Sullivan & Worcester, for Camar Corporation, an interested party.
Sandra D. Baker Jumper, Esq., Department of the Navy, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that intended awardee is not eligible for award because it was not an approved source for the item being procured prior to the date of the solicitation's issuance, as required by the terms of the solicitation, is denied where the restrictive clause was improperly included in the solicitation, and the record does not establish that the protester was prejudiced by the improper inclusion of this clause.

DECISION

Warren Pumps, Inc. protests the proposed award of a contract to Camar Corporation under request for proposals (RFP) No. N00104-92-R-E164, issued by the Department of the Navy for one reciprocating pump. Warren primarily argues that Camar, unlike itself, is ineligible for award under the terms of the solicitation.

We deny the protest.

BACKGROUND

The solicitation was issued on June 5, 1992, to procure, on a fixed-price basis, one reciprocating pump, listed in the solicitation item description by its national stock number (NSN), 3H 4320-00-372-0175, as well as the following identifying information:

Pump, Reciprocating
63857 P/N: BS5-2339

The first set of numbers, 63857, is the commercial and government entity (CAGE) number of Warren,[1] and the second set of numbers, BS5-2339, is the Warren part and drawing number for the pump. Warren is the original equipment manufacturer (OEM) for this stock number.

Prospective offerors were advised that award would be made to the responsible offeror proposing the lowest price and meeting the solicitation's requirements. In addition, section L of the solicitation contained three clauses relevant to this protest. Clause L-42, "Notice to Offerors-Source Control," stated that:

> "Previous delivery of the specified [NSN] . . . does not in itself qualify a supplier as a government approved source. Accordingly, offerors must comply with the requirements of solicitation clause L-43, entitled 'Procedure for Obtaining Source Approval,' and furnish the proof or data required by [that clause]."

Clause L-43 stated that:

> "Only those sources for this item previously approved by the government have been solicited. The time required for approval of a new supplier is normally such that award cannot be delayed pending approval of the new source. If you have not been solicited and you can furnish either (i) proof of your prior approval as a supplier of this item, or (ii) data showing you have produced the same or similar items satisfactorily for the government or a commercial source, or (iii) test data indicating your product can meet service operating requirements, or (iv) other pertinent data concerning your qualification to produce the required item, please notify the PCO in writing, furnishing said proof or data for evaluation and approval."

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[1]A CAGE number is a unique code given to contractors so that payment can be executed and to track ownership of technical data. The Scotsman Group, Inc., B-245634, Jan. 13, 1992, 92-1 CPD ¶ 57.

However, clause L-67, "Procedure for Approval of Prospective Offerors," stated that:

> "OFFERORS ARE CAUTIONED THAT UNLESS THEY ARE SOURCE APPROVED (BY THIS ACTIVITY) FOR PRODUCTION OF THE SOLICITED ITEM(S) AS OF DATE OF THIS SOLICITATION, NO AWARD WILL BE MADE TO THEM AS A RESULT OF THEIR PROPOSAL, NOR PAYMENT MADE FOR THE INFORMATION PROVIDED."

The clause continued by explaining that technical data was required to establish, for the purpose of evaluation and possible future awards, the acceptability of the proposed products.

The Navy received two proposals by the July 6, 1992, closing date, one from Warren and one from Camar. Warren offered its part number (listed in the RFP's item description) and Camar offered what it called an alternate product, "manufactured to OEM spec," under part number "CV9S4700-036." Camar's proposal included a technical data package for the offered pump.

On July 8, the contract specialist asked Ship Parts Control Center's (SPCC) technical office to evaluate Camar's proposal, and this request, along with Camar's drawings, was forwarded to the In-Service Engineering Activity, Naval Surface Warfare Center, Philadelphia (NAVSSES). NAVSSES reported back that since Camar possessed the OEM drawings,[2] that phase of Camar's manufacturing process was considered to be acceptable. However, since Camar was not the OEM, its pump had to pass a first article test at its own expense to ensure the government that the entire Camar pump manufacturing process was accurate.

Discussions were conducted on February 1, 1993, with representatives of both Warren and Camar. The contract specialist's contemporaneous record of these discussions states that he told Warren's representative that "an

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[2]Warren's argument that Camar improperly possesses these drawings is not for our review, as a protest that a competitor may be using the protester's proprietary data presents a dispute between private parties which our Office will not consider. See, e.g., Olin Corp., B-252154, Mar. 9, 1993, 93-1 CPD ¶ 217, aff'd, Olin Corp.--Recon., B-252154.2, June 3, 1993, 93-1 CPD ¶ 428. As to whether these drawings, submitted to our Office pursuant to this protest, should be covered by the protective order issued in this protest, since an agency-level protest of the proprietary nature of the drawings is ongoing, we think it appropriate to include the drawings under the coverage of the protective order.

alternate offer has been approved." Amendment No. 0001, issued on February 2, established a February 26 closing date for the submission of best and final offers (BAFO). In addition, the amendment instructed offerors that the page of the original solicitation containing the item description was superseded by a page contained in the amendment. On this new page, a new item description appeared:

NSN: 3H 4320-00-372-0175
Pump, Reciprocating
CAGE 63857 P/N: BS5 2339
CAGE 55422 P/N: CV9S4700 036

The record shows that the last line of this item description lists Camar's CAGE number (55422), and a part number, "CV9S4700 036," identified by the agency as a Navy drawing number--a Bureau of Ships number--that corresponds with Warren drawing number BS-1711, which contains the assembly diagram, spares list, and materials list for this pump. The amendment also included various first article testing requirements, and stated that, "as discussions have concluded, alternate proposals will not be considered."[3]

On July 2, SPCC's technical office told the contract specialist that Camar was not an acceptable source of supply because its drawings applied to the CV-9, a decommissioned ship, while the required pump was for the LPH and LPD class ships. On July 16, Camar filed a protest in our Office challenging the contract specialist's determination that its offer was no longer considered to be acceptable; after the agency agreed to initiate an additional technical review of Camar's drawings, the protest was withdrawn.

On August 17, NAVSSES reported that Camar's drawings applied to various CV class ships and could not be used to extend coverage to the ship classes for which the pump was required. Because this report did not explain why Camar's drawings could not be used to manufacture the pump for the required ship classes, the contract specialist directed NAVSSES to provide that explanation on two separate occasions. On January 3, 1994, NAVSSES stated that Warren's BS5-2339 drawing was an outline and certification drawing

[3]Warren's argument that Camar is ineligible for award because it offered an alternate product is without basis. The solicitation, as amended, indicated that the Navy would accept either Warren's part number BS5-2339 or Camar's part number CV9S4700-036; thus, the amendment's prohibition of alternate offers applied only to subsequent offers, not to Camar's previous offer.

from which no manufacture could be accomplished, but that it referenced detailed drawings--BS5-1707, BS5-1708, BS5-1709, BS5-1710, and BS5-1711--that could be used for manufacturing. These OEM drawings had previously been obtained by the government and assigned Bureau of Ships numbers; these Bureau of Ships-numbered drawings are what Camar possessed.

NAVSSES resolved the question concerning the applicability of Camar's drawings to the required classes of ships,[4] and further stated that Camar's drawing CV9-S4700-036 was not an acceptable alternative for Warren's drawing BS5-2339. The NAVSSES report explained that drawing CV9-S4700-036 was equivalent to the Warren's drawing BS5-1711, which had been revised three times. While two of these revisions incorporated minor changes to the drawing, the third revision changed the material of the steam piston rod, piece number 18. NAVSSES stated that this material revision was significant and must be required for the procurement of this pump. Camar's drawings were the original, unrevised drawings and "because of this" could not be accepted for review.

The contract specialist drafted a letter to notify Camar of its technical unacceptability, but, after supervisory review, the contract specialist was told to initiate another technical review, conducted only by SPCC. On April 20, SPCC's technical office stated that both Warren and Camar would be acceptable provided that Camar manufactured the pump in accordance with the material revision referenced above, and provided that Camar undergo first article testing in accordance with paragraph 4.2 of military specification MIL-P-19158. In attached documentation, the agency noted that the shock test referenced in paragraph 4.2 of MIL-P-19158 would not be required during first article testing, and that Warren would not be required to undergo first article testing at all.

Amendment No. 0002 was issued on August 16. Aside from establishing a new closing date for the submission of BAFOs, the amendment's item description continued to list Warren's CAGE number and Warren's part number, as well as Camar's CAGE number and the Navy drawing number. The amendment also

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[4]The NAVSSES report stated that a search of Warren's records showed that drawing BS5-2339 applied to all but one of the LPH class ships. Since Camar possessed all of the Bureau of Ships drawings referenced for the manufacture of the pump by Warren's drawing BS5-2339, both Warren's and Camar's drawings could be used to supply pumps for all but one of the required ships. Thus, Warren's protest that Camar is ineligible for award because its drawings apply to decommissioned ships applies equally to the awardee itself.

specified the material requirement for the steam piston rod, discussed above. Finally, the amendment incorporated the latest revision of MIL-P-19158, revision A. The amendment did not disclose that MIL-P-19158A's shock test requirements would not be imposed during first article testing.

Both Warren and Camar submitted timely BAFOs on September 19, offering the part numbers associated with their respective CAGE numbers on the amended solicitation's item description. On September 29, Warren was notified that the Navy intended to award the contract to Camar, the lowest-priced offeror, and this protest was filed the next day.[5] Warren primarily argues that Camar is ineligible for award under the terms of the solicitation because, unlike Warren, it was not an approved source as of the date of the solicitation's issuance.

TIMELINESS

As an initial matter, the Navy and Camar maintain that Warren's protest that Camar is ineligible for award because it was not an approved source for this pump as of the date of the solicitation's issuance is untimely. The parties assert that on February 1, 1993, Warren was told that "an alternate offer has been approved"; amendment No. 0001, issued on February 2, expanded the item description by including Camar's CAGE number and an additional part number as an item that could be provided to the Navy; following the issuance of this amendment, Warren gave the Navy copies of videotaped hearings before this Office on the issue of Camar's acceptability under previous solicitations for component parts of this pump; and amendment No. 0002, issued on August 16, 1994, repeated the item description contained in amendment No. 0001. The Navy and Camar argue that these facts show that Warren was on notice that Camar had proposed an acceptable pump by no later than August 16 and, to be timely, a protest of Camar's acceptability should have been filed prior to the time set for closing on September 19, 1994, by that amendment. See 4 C.F.R. § 21.2(a)(1) (1994).

It is true that Warren knew, as of February 1, 1993, that the Navy had approved an alternate offer, and that Warren should have known, as of February 2, that Camar submitted that offer--the additional CAGE code in the amended item description is specific to Camar. However, the record also shows that the part number listed beside Camar's CAGE code is a Navy drawing number which correlates with the Warren

[5]While the Navy notified Warren by letter dated September 23 that award had been made to Camar, no award has been made. The Navy states that it does not intend to award a contract while this protest is pending.

drawing for assembly, list of spares, and list of materials. As Warren points out, there is no record in Department of Defense (DOD) documents to show that this is a Camar part or drawing number. Moreover, Warren contends that Camar could have been offering a Warren pump purchased from Warren, or an approved pump manufactured by Ingersoll-Dresser, another manufacturer listed in DOD documents under this stock number. Neither the Navy nor Camar disputes Warren's claim. Thus, while Warren should have known that the Navy had approved the item offered by Camar, it is not clear that Warren should have known what that item was, or whether it had been previously approved.[6] We will resolve doubt as to when the protester became aware of its basis for protest in favor of the protester for purposes of determining timeliness. See Eklund Infrared, 69 Comp. Gen. 354 (1990), 90-1 CPD ¶ 328.

ANALYSIS

There is no question but that clause L-67 limits award to a source approved for the supply of the pump by June 5, 1992, the date of the solicitation's issuance. Despite the Navy's suggestion to the contrary, clause L-43, which allows for consideration of "other pertinent data concerning [a firm's] qualification to produce the required item," is not inconsistent with clause L-67, given the latter clause's statement of the agency's willingness to evaluate submissions of technical data for possible future awards.

However, the Navy contends that clause L-67 was mistakenly and improperly included in the solicitation. As the Navy explains, "source approval" refers to the qualification requirements described in subpart 9.2 of the Federal Acquisition Regulation (FAR). Qualification requirements are government requirements for testing or other quality assurance demonstrations that must be completed before the award of a contract. 10 U.S.C. § 2319(a) (1988); FAR § 9.201. Both 10 U.S.C. § 2319(b) and FAR subpart 9.2 contain specific responsibilities for agencies imposing qualification requirements. Among other things, they must prepare a written justification for the qualification requirement, FAR § 9.202(a)(1); provide offerors all

[6]In addition, Warren's senior sales engineer attests that on several occasions after the issuance of amendment No. 0001, he asked Navy technical personnel if Camar had been approved as the manufacturer (as opposed to the supplier) of the pump, and was told that none of the testing had been conducted to do so. Since the solicitation indicated that only approved sources were eligible for award, Warren asserts that it understood that Camar was not an manufacturer of the pump.

requirements they must satisfy to become qualified, FAR § 9.202(a)(2); and provide an opportunity for qualification before award by publishing a notice in the Commerce Business Daily. FAR § 9.205; see ABA Indus., Inc., B-250186, Jan. 13, 1993, 93-1 CPD ¶ 38. In addition, FAR § 9.206-2 requires contracting officers to insert the "Qualification Requirements" provision at FAR § 52.209-1 when the acquisition is subject to a qualification requirement.

The Navy asserts that it did not comply with these FAR requirements and, thus, could not enforce such pre-proposal testing. Under FAR § 9.206-1(a), agencies may not enforce any qualified products list (QPL), qualified manufacturers list (QML), or qualified bidders list (QBL) without first complying with the requirements of FAR § 9.202(a). Since it did not comply with these requirements, the Navy contends that clause L-67 is inapplicable and should be read out of the solicitation.[7]

Warren does not dispute that the Navy failed to comply with the FAR requirements, but contends that this acquisition was subject to a regulatory exception. Section 9.206-1(a) of the FAR states that qualification requirements themselves, whether or not previously embodied in a QPL, QML, or QBL, may be enforced without regard to section 9.202(a) if they are, among other things, established by statute or administrative action prior to October 19, 1984, for DOD and the National Aeronautics and Space Administration. Warren contends that MIL-P-19158A, which predates 1984 and was incorporated in this solicitation, provides the standards and test procedures for determining whether the source of supply for this pump is acceptable--in fact, Warren contends that its pump was approved under this standard in 1964.

The record shows that while MIL-P-19158A applies to this solicitation, and that there was indeed a QPL associated with this specification, that QPL was canceled in 1962. The applicable notice from the military specifications file, dated June 5, 1962, states that,

> "Qualified Products List QPL-19158-2, dated 10 June 1959, is hereby canceled.
>
> Qualification approval is not required by current issues of Specification MIL-P-19158A(Ships)."

The Navy's lead reprocurement technician responsible for pump and related piece-parts attests that there has been no

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[7]While the Navy does not so argue, it would appear that the other clauses concerning source approval, L-42 and L-43, are also unenforceable under the agency's theory.

pre-award approval process for this pump since the 1962 cancellation.

Warren disputes this assertion, arguing that while the agency may not have been required to use this military specification as a pre-award approval process, it continued to do so. Indeed, the record confirms Warren's assertion that its drawing BS5-2339 was approved under this specification in 1964,[8] and the agency does not dispute Warren's contention that its pump was approved under this specification for other Navy contracts in, as the drawing indicates, the 1960s. However, Warren has not presented this Office with any evidence of a current pre-award approval process for this pump.[9]

A military specification's reference to a QPL requirement does not substitute for compliance with the requirement that the solicitation notify potential offerors that a QPL requirement would apply, such as the presence in the solicitation of the clause at FAR § 52.209-1. Comspace Corp., B-237794, Feb. 23, 1990, 90-1 CPD ¶ 217. Further, the record shows no compelling urgency precluding the agency from offering a previously non-approved source an opportunity to submit its proposal for qualification in order to be eligible for award--more than 2 years passed between the solicitation's issuance and receipt of final proposals. Id. Finally, a requirement such as that contained in clause L-67 is contrary to the regulatory requirements to provide an opportunity for offerors to compete; if a potential offeror can demonstrate to the satisfaction of the contracting agency that its product meets the standards established for qualification, or can meet those standards prior to award, it may not be denied consideration for award of a contract solely because it is not yet on the relevant QPL. FAR § 9.202(c); Aerosonic Corp., 68 Comp. Gen. 179 (1989), 89-1 CPD ¶ 45. Under the circumstances, we have no basis to disagree with the agency when it asserts that clause L-67 was improperly included in this solicitation.

This conclusion, however, does not end our inquiry. The plain fact is that the solicitation did include this clause, and that Warren prepared its proposal with the reasonable

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[8]In light of the drawing's clear notice of Naval approval in 1964, the Navy's argument that Warren was not an approved source is untenable.

[9]Warren has not provided us with any evidence to support its implied argument that the existence of pre-approval processes for component parts of this pump proves the existence of a pre-approval process for the pump itself.

expectation that it would be competing against other previously approved sources or, at the very least, other approved sources, and that its competitors would be subject to the same source approval requirements to which it was subject. Consequently, we must examine whether Warren was prejudiced by the agency's improper inclusion of this clause.

The Navy, citing our decision in Comdyne I, Inc., B-232574, Dec. 21, 1988, 88-2 CPD ¶ 611, argues that Warren was not prejudiced because the inclusion of clause L-67 could have had no effect on the preparation of its offer. The Navy states that a pump manufactured to either the Warren drawings or the drawings in Camar's possession, inclusive of the called-out material for the steam piston rod, would be acceptable. Warren offered to supply the required stock number, and the Navy states it would not accept an offer for a different item.

Warren contends that it was prejudiced by the inclusion of clause L-67.[10] Because Warren reasonably expected, based on the terms of the solicitation, that only approved sources would be eligible for award, it proposed a pump which would comply with current specifications and testing requirements, and it expected to be competing against other offerors that would do the same. However, Warren asserts that the Navy is subjecting Camar to less stringent specifications and testing requirements than were imposed on Warren in its prior approval, and states that it could have reduced its costs by relaxing its specifications and manufacturing procedures if it had known that the Navy was willing to award the contract to an "acceptable, previous non-supplier" of the pump, as opposed to a government-approved source.

Prejudice is an essential element of every viable protest, Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379, and we will not sustain a protest where the record does not establish prejudice, i.e., that the protester would have had a reasonable possibility of receiving the award. In a case such as this, where a solicitation's clause was inadvertently included, our examination of this issue turns on whether the inclusion of the clause could have had an effect on the preparation of the protester's offer. Comdyne I, Inc., supra. The record here does not establish prejudice.

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[10]Warren has also argued that the Navy, in considering Camar's proposed pump to be an acceptable alternative to Warren's, treated the offerors unequally. Because this argument is closely related to the question of whether Warren was prejudiced by the inclusion of clause L-67, our analysis of the two issues is combined here.

Warren first argues that while it proposed a pump built to the most current drawing specifications, the Navy accepted Camar's proposal to build a pump based on a design that lacked the latest three drawing revisions.

As discussed above, the record shows that the Navy was aware of this problem--in fact, this inadequacy caused the Navy to reject Camar as unacceptable for some time. However, the agency eventually determined that, with one exception, the revisions contained no material information. As for that exception, the material for the steam piston rod, the Navy specifically disclosed the relevant information to Camar in the second amendment. While Warren asserts that the revisions are material, "requiring the use of costly materials and additional manufacturing procedures," it does not provide us any specific basis to find a prejudicial distinction between the two pumps.[11]

Warren next argues that it proposed a pump built in accordance with the military specification under which it was approved in 1964, MIL-P-19158, whose latest revision was incorporated, in its entirety, in this solicitation. Section 3.2.2 of MIL-P-19158A contains a "shockproofness" requirement, which essentially requires that the pump be designed to withstand certain shocks. Section 4.2.7 of MIL-P-19158A, "shock tests," states that one complete pumping unit must be subjected to the high-impact shock test of that separate military specification in accordance with section 3.2.2. Warren contends that while it proposed a pump built to pass this shock test, and expected that its competition would as well, the Navy is not requiring Camar's pump to pass the shock test during first article testing.

The Navy states that while Warren's pump may have previously undergone a shock test, that test was undertaken to prove the design on the subject pump. Since the design is now proven, the shock test is not now required of either Warren or Camar. For its part, Camar echoes the agency by asserting that it offers to manufacture the pump according to a proven design--Warren's--which has already been tested for shock as part of design testing.

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[11]Similarly, while Warren complains that Camar's drawings are inadequate for manufacturing purposes because they do not provide the required internal procedures necessary for manufacturing, the firm has not made a sufficient showing to support this assertion. The proven design is to Warren's BS5-2339, and Camar's drawings were found to be an acceptable substitute. See Appeal of Offshore Enters., Inc., ASBCA No. 34470, Aug. 26, 1992, 93-1 BCA ¶ 25,377.

The record shows that Warren had no way to know that the shock test would not be required of it--the solicitation incorporated the whole of MIL-P-19158A. For the same reason, however, Camar also had no way to know that the shock test would not be required of it. There is every reason to believe that both offerors prepared their proposals to conform--in its entirety--with MIL-P-19158A, which includes both designing the pump to be "capable of passing the high-impact shock test," and actually passing the shock test.[12] Thus, any suggestion that Camar somehow benefited in the preparation of its proposal by the agency's internal decision not to subject its pump to the shock test is not supported by the record.

Even setting that aside, we are not persuaded by Warren's implied argument that there is a material manufacturing distinction between the requirement to build a pump to a design proven to pass the shock test, and the requirement that the pump actually pass the shock test.

Section 3.2.2 of MIL-P-19158A is primarily concerned with the design of the pump:

> "3.2.2.1 All equipment shall be designed to withstand shock due to firing of the ship's own armament and noncontact underwater explosions of near-miss aerial bombs, torpedoes, and mines. . . .
>
> "3.2.2.2 Equipment shall be designed to resist shock . . . .
>
> "3.2.2.3 The design of all complete pump units shall be such that they are capable of passing the high-impact shock test specified in MIL-S-901."

Section 4.2.7 of MIL-P-19158A is concerned with the testing of individual pump units to the shock tests:

> "4.2.7.1 One complete pumping unit of each type, design and size shall be subjected to the high impact shock test of MIL-S-901 as specified in 3.2.2.

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[12]We note that Warren does not address section 4.2.7.4 of MIL-P-19158A, which states that "[e]quipment previously shock tested and accepted will not be required to be retested except when evidence of low shock resistance develops in the units installed." This section puts into question Warren's expectation that its pump would have to pass the shock test.

> "4.2.7.2 All pump units shall be shock tested with drivers unless otherwise approved . . . .
>
> . . . . .
>
> "4.2.7.5.1 Pump units which have been subjected to the high-impact shock test and have failed to conform to the requirements of this specification will not be acceptable."

Warren states that if it had known the Navy would accept a pump that did not have to pass the shock test, it could have reduced its specifications and manufacturing procedures and proposed a lower price. Warren's manager for Navy and Marine Marketing and Sales attests that the "ability for a pump unit to pass the shock test is dependent on material selection, manufacturing procedures, number of manhours devoted to the production effort and other factors." He elaborates as follows:

> "Special and expensive procedures must be used to manufacture a pump that is able to pass the shock test . . . . It is simply much more time consuming, both in the manufacturing and quality assurance process, to build a pump so that it will pass the shock test. The need to pass the shock test can have a direct effect on the type of material (e.g., steel or bronze as opposed to cast iron) and the quantity of materials (e.g., the thickness and density of the material)."

However, we see no material distinction between "the ability for a pump unit to pass the shock test" and MIL-P-19158A's requirement that "the design of all complete pump units shall be such that they are capable of passing" the shock test. We also find Warren's general statements concerning the additional costs of manufacturing procedures and manhours associated with making a pump to pass the shock test unpersuasive. It is unreasonable to assume, as Warren would apparently have us do, that a manufacturer, such as Camar, that believes its pump must be capable of passing a performance test, would not build into the pump's price these "additional costs of manufacturing procedures and manhours associated with making a pump" that will pass the shock test. Finally, since the drawings in Camar's possession include extensive materials lists and measurements, we are not convinced that its pump, built to a design proven to pass the shock test, would be any different from a pump that must actually pass the shock test. Under

the circumstances, the record does not establish that the agency's improper inclusion of the clause had an effect on the preparation of Warren's offer. Comdyne I, Inc., supra.

The protest is denied.

Ronald Berger
for Robert P. Murphy
General Counsel