



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Camar Corporation  
**File No.:** B-258794; B-258794.2  
**Date:** February 14, 1995

Richard D. Lieberman, Esq., Sullivan and Worcester, for the protester.  
Marsha M. Wright, Defense Logistics Agency, for the agency.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency properly rejected protester's alternate product for failure to supply original equipment manufacturer (OEM) data where this information was reasonably required by the agency to ensure the technical acceptability and functional integrity of any alternate offer for the required critical application item.

## DECISION

Camar Corporation protests the award of a contract to IMO Delaval, Inc. under request for proposals (RFP) No. SP0760-94-R-2210, issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency (DLA) for 15 wheel turbines. Camar contends that DLA improperly rejected its offer as technically unacceptable.

We deny the protest.

## BACKGROUND

The RFP was issued on October 20, 1993; the wheel turbine being procured here is a critical application item<sup>1</sup> used to drive the fuel service pump on Navy ships. VT: 9:37:40.<sup>2</sup>

<sup>1</sup>A critical application item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. See Federal Acquisition Regulation § 46.203(c).

<sup>2</sup>In order to resolve Camar's protest, we conducted a hearing pursuant to 4 C.F.R. § 21.5 (1994). References to the hearing video tape are identified by "VT."

The RFP described the wheel turbine part by its national stock number (NSN) and the part number: "IMO DELAVAL INC (16712) P/N 400-056." The RFP also contained DLA's "products offered" clause, which permits firms to offer alternate products not manufactured by the original equipment manufacturer (OEM). This clause requires firms offering alternate products to submit a technical data package (TDP) to the agency which establishes that the offered alternate item is physically, mechanically, electrically and functionally interchangeable with the OEM part identified in the solicitation. The "products offered" clause also states 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 solicitation specifically advised offerors that Delaval was the only approved source for this particular wheel turbine, and that DLA did not have any Delaval drawings for this part.

At the November 19 closing date, only Camar and Delaval submitted offers; Camar proposed the lower price. Because the solicitation provided for award to the low-priced, technically acceptable offeror, DLA began evaluating Camar's submitted TDP, which consisted of: (1) a 1943 Navy drawing of the original wheel turbine part, including its component parts, manufacturing standards and materials list; and (2) a 1994 Camar drawing adapted from the 1943 Navy drawing, modified and updated with all current manufacturing processes, dimensions, military specifications, and materials, prepared specifically for this procurement.

After reviewing this initial TDP, the DLA technician<sup>1/2</sup> advised the contracting officer that Camar's submission was insufficient; the technician stated that he could not determine the technical equivalence of Camar's offered part to the required Delaval wheel turbine. On March 16, 1994, the contracting officer conveyed DLA's technical findings to Camar and requested more data to establish the Camar part's technical equivalence to the specified Delaval P/N 400-056; in response, on May 18 and June 22, Camar submitted supplemental TDPs which contained additional technical detail and explanations--but no OEM drawings or other OEM technical data.

On September 27, DLA notified Camar that its offer was rejected as technically unacceptable due its failure to provide OEM data, and that contract award would be made to Delaval for the wheel turbines; on October 4, Camar filed this protest.

## ANALYSIS

While an agency may properly restrict an acquisition to approved sources, it must provide unapproved sources a reasonable opportunity to qualify. 10 U.S.C. § 2319 (1988). However, the obligation to demonstrate the acceptability of an alternate offer is on the offeror, and consequently, an offeror must submit sufficient information with its alternate item to enable the contracting agency to determine whether the item meets all the requirements of the solicitation. Alfa Kleen, B-252743, July 26, 1993, 93-2 CPD ¶ 55. 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. Marine Electric Systems, B-250630, Sep. 15, 1993, 93-2 CPD ¶ 175. We will not disturb an agency's technical determination in this regard unless it is unreasonable. Id.

Even where--as here--information may be difficult to obtain due to its proprietary nature, an agency may properly determine that an alternate product offer does not establish the acceptability of the alternate without that information, so long as it is reasonably necessary for a thorough evaluation. Camar Corp., B-249250, Nov. 2, 1992, 92-2 CPD ¶ 300. In this regard, while we are concerned with the difficulties which a firm like Camar faces in attempting to obtain source approval for its product, we also recognize the agency's legitimate interest in ensuring the functional integrity of a critical application item. Id.

Here, we find that DLA acted reasonably in rejecting Camar's alternate offer. Although the protester argues that an acceptable wheel turbine can be successfully manufactured based on the data it has submitted,<sup>3</sup> the record shows that OEM data is vital for a proper technical evaluation of the alternate part. As explained by DLA, absent OEM data, the agency has no meaningful way to perform a comparison between critical characteristics of the Delaval wheel turbine and a proposed alternate offer; any deviation from the critical specifications of the approved wheel turbine--i.e., dimensions or strength tolerances--will result in a malfunctioning turbine which could decapitate or severely wound shipboard personnel working in the turbine's

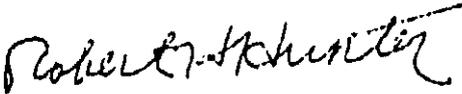
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<sup>3</sup>At the hearing on the protest, Camar explained that through a series of government and private industry references, Camar updated the 1943 drawing--which was initially developed for the Navy by Delaval and has since become part of the public domain--into a 1994 manufacturing drawing, fully compliant with all current military specifications. VT: 10:00:11 - 10:15:00; 12:46:17 - 12:51:00.

proximity, and jeopardize a ship's mission. VT: 9:38:15; 9:39:23; 9:42:13. From this record, it is also clear that Delaval--which exclusively owns all the data rights to this item, VT: 9:19:36; 11:47:51--is unwilling to provide the agency with any details about its wheel turbine. According to DLA, although the agency has requested assistance, Delaval will not provide any technical data or drawings, nor explain whether any significant changes have been made since the 1943 drawing used by Camar to develop its current technical drawing for this part. VT: 9:27:58 - 9:30:04; 12:16:34 - 12:17:00.

As noted above, the RFP advised offerors that the only OEM for the required wheel turbine item was Delaval and that the agency did not have access to OEM data. The RFP also advised offerors--through the "products offered" clause--that, if available, offerors should furnish OEM data with their alternate product proposal. While it is unfortunate that Camar cannot compete for this requirement without providing OEM data, given the critical role of the OEM data, and Camar's failure to provide this information, we find the agency's rejection of Camar's alternate product offer to be reasonable. See Marine Electric Sys., supra.

The protest is denied.

  
for Robert P. Murphy  
General Counsel