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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Viking Inc.--USA

**File:** B-401528

**Date:** August 25, 2009

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Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.  
Richard Ferguson, Esq., Defense Logistics Agency, for the agency.  
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where protester failed to furnish, and agency officials were otherwise unable to gain access to, documentation demonstrating that protester's product had previously been approved as an acceptable alternate to specified product, agency properly sought data package for the product from the protester and rejected its quotation when protester failed to furnish a complete package.

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### DECISION

Viking Inc.--USA, of Marrero, Louisiana, protests the rejection of its quotation under request for quotations (RFQ) No. SPM7L509T4181, issued by the Defense Logistics Agency (DLA), Defense Supply Center-Columbus, for poppet valves to be used in the Paxman diesel engine model Y3J.

We deny the protest.

### BACKGROUND

The RFQ sought quotations for 71 poppet valves, which were described by National Stock Number (2815-99-534-5588), the engine in which used (the Paxman model noted above), and the original equipment manufacturer's part number (Man Diesel North America, Inc. P/N Y3J10317). The RFQ stated that the buy was a candidate for automated award and incorporated by reference the terms and conditions set forth in the DLA Master Solicitation for Automated Simplified Acquisitions. Of relevance to this protest (and as discussed in greater detail below), the master solicitation included Defense Logistics Acquisition Directive (DLAD) § 52.217-9002, which required that vendors offer either the product cited in the item description or a

product physically, mechanically, electrically, and functionally interchangeable with that product.

Viking submitted a quotation prior to the specified date of May 1. The quotation described the product that the protester was offering as follows:

PREVIOUSLY-APPROVED PRODUCT

CAGE : 1EN78 P/N: Y3J10317A

Viking supplies this part to the US Coast Guard and Navy Paxman Engine rebuild depot Marine Corps Logistics Base Barstow under several contracts M6220405p2082 M6700406p1622.

Agency Report (AR), Tab 7. The protester reports that the agency rejected this quotation on May 1 on the basis that it was not the lowest-priced offer after the evaluation factor was applied.<sup>1</sup>

Viking submitted a revised quotation on May 5.<sup>2</sup> The quotation included the same description of the product offered as above. The quotation was accompanied by the following email message from Viking's representative:

This was submitted as a Previously Approved Part, Not [an] Alternate. I have provided you in our bid submission contract numbers issued by the Marine Corps Logistics Base in Barstow and Albany for Identical part that you are seeking to [sic] in this solicitation. With the submission of my revised offer there should be sufficient cost saving to meet the \$200 plus \$1500 requirement for DLA to submit a DD339 to the ESA [Engineering Support Activity] for evaluation.

AR, Tab 8.

On June 3, the protester notified the buyer that it was faxing her six contracts issued by the Marine Corps Logistics Bases in Barstow, California and Albany, Georgia

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<sup>1</sup> The Master Solicitation for Automated Simplified Acquisitions provides that price will be evaluated by adding to the quoted price "\$200 for quoting an alternate item if only a local technical evaluation is involved, plus an additional \$1500.00 for each required Engineering Support Activity evaluation." Master Solicitation at 6.

<sup>2</sup> Neither party has furnished an explanation as to why Viking was permitted to furnish a revised quotation. We note that the master solicitation does permit the agency to extend the solicitation return date for 3 business days and to invite vendors to submit revised quotations when none of the originally submitted prices can be determined reasonable; this may have been the basis for the decision to permit Viking to submit a revised quotation here.

“showing previous supply of this valve to the Government . . . .”<sup>3</sup> AR, Tab 10. The message further advised that Viking was sending its drawing “for technical review by NAVSEALOG.”<sup>4</sup>

On June 17, the buyer notified the protester that its “alternate offer was not evaluated because the data package was not complete.” AR, Tab 12. Viking protested to our Office on June 25.

## DISCUSSION

Viking argues that it offered a previously-approved, as opposed to an alternate, product, and thus should not have been required to submit a data package for evaluation. The protester further argues that the agency improperly failed to request information pertaining to the acceptability of its valve from the Marine Corps.

As previously noted, the RFQ here incorporated by reference DLAD § 52.217-9002, which instructed offerors to indicate in their quotations whether they were offering an “exact product,” an “alternate product,” a “superceding part number,” or a “previously-approved product,” and to furnish the data required for whichever was applicable. For an alternate product, offerors were required to furnish “drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered;” in addition, they were required to furnish data describing the exact product cited in the item description to the extent that this information was not already available to the government. The section further instructed that if, as was the case here, the solicitation did not identify the level of data in the government’s possession, offerors were to assume that no data was available and to “furnish drawings and other data covering the design, materials,

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<sup>3</sup> It appears that Viking furnished copies of the six contracts to the buyer after being notified by the agency via email that “[i]f contractor bid that he was a manufacture[r] of the item and this Center does not have any record of his Part Number approval, contractor must either provide a copy of a letter which shows his part number was approved or THE ALTERNATE OFFEROR IS REQUIRED TO PROVIDE A COMPLETE DATA PACKAGE INCLUDING DATA FOR THE APPROVED AND ALTERNATE PART FOR EVALUATION.” AR, Tab 10.

<sup>4</sup> Four of the six contracts, as well as the drawing, furnished by the protester were for P/N Y3J10317A, while two contracts were for Y3J10317. The protester states that P/N Y3J10317 and P/N Y3J10317A both fall under NSN 2815-99-534-5588 and that the two parts “are identical in every respect, other than the fact that the P/N ending with the letter ‘A’ is a premium valve, in that the seating is manufactured from ‘stellite’ metal alloy, whereas the P/N without the letter ‘A’ is a standard valve (i.e., the seating is manufactured from standard material).” Protest at 6.

etc., of the exact product cited in the AID [acquisition item description], sufficient to establish that the Offeror's product is equal to the product cited in the AID." DLAD § 52.217-9002(c)(3)(a). For a previously-approved product, offerors were required to identify the contract or solicitation under which the product had previously been furnished or evaluated and approved; offerors were cautioned as follows, however:

If the product was furnished or evaluated and approved by a contracting activity different from the one issuing this solicitation, Offerors are advised that the Contracting Officer may not have access to records of another activity or other information sufficient to reasonably determine the offered product's acceptability. Therefore, in order to ensure that adequate data is available for evaluation, Offerors may elect to furnish with their offer the information requested by subparagraph (b) [pertaining to submission of an exact product] or (c) [pertaining to submission of an alternate product] of this provision, whichever is applicable for the offered product. Offerors are advised that if the additional data is not furnished, the Government may not be able to evaluate the offer.

DLAD § 52.217-9002(e)(2).

The foregoing paragraph makes clear that if, as was the case here, a vendor offers a product that was furnished to, or approved by, a contracting activity different from the one conducting the procurement in question, the contracting officer may not be able to obtain the records establishing the product's acceptability, and that if the contracting officer is unable to gain access to such records, the offeror must submit a data package to ensure evaluation of its offer. The agency explained that while the protester furnished evidence that it had previously furnished the valves to the Marine Corps, it did not furnish evidence that the valves had been approved. The agency noted in this connection that while one of the military services can decide to accept the risk associated with buying an item that has not been approved by the responsible ESA (which in this case was the Naval Inventory Control Point, Mechanicsburg, Pennsylvania), DLA will only acquire an exact product or one that the ESA has determined to be a technical equivalent. DLA also noted that in response to the protest here, it had attempted to gain access to archived files of the Marine Corps to determine if Viking had undergone some form of technical evaluation and approval for the item offered, but was unsuccessful.

The agency further explained that in an attempt to resolve Viking's protest, it had contacted the individual at the ESA whom the protester's attorney had identified to agency counsel as a source who could provide information regarding the approval of Viking's product; this individual stated that he did not have the authority to approve the item (his authority being limited to making recommendations regarding approval to a senior engineer), and thus had not approved Viking's part. This individual further advised that if Viking's part had been approved, a "certificate of

conformance” would have been issued to Viking. DLA personnel followed up on the foregoing representations by contacting the senior engineer in question, who stated that he had no recollection of approving Viking’s part for this NSN; in addition, DLA personnel contacted Viking to inquire whether it had a certificate of conformance and were told that it did not have such a document.

Given that, despite their reasonable efforts, DLA personnel were unable to locate documentation establishing that Viking’s part had been approved as an acceptable alternate to the specified part, we think that it was both reasonable and consistent with the terms of the RFQ for the agency to require a data package for evaluation.

In commenting on the agency report, the protester raised an additional argument—that the agency had deprived it of the opportunity to gain approval of its item in time for award under this RFQ by failing to refer its drawing to the ESA for approval.

The master solicitation for automated simplified acquisitions explicitly provides that “[a]lternate offers will not be considered for automated award,” but that they “may be submitted for evaluation for future procurements . . . .” Master Solicitation at 5. To the extent that the protester had an objection to the above clause barring consideration of alternate offers for automated award, it needed to raise its objection prior to the closing date for receipt of quotations. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2009) (to be timely, a protest based on an alleged impropriety in a solicitation must be filed prior to the closing date for receipt of offers/quotations). In any event, the provision is clearly intended to prevent delay in making automated awards, which is consistent with statutory authority providing that an agency need not delay a procurement in order to provide an offeror an opportunity to demonstrate its ability to become qualified. 10 U.S.C. § 2319(c)(5) (2006); Advanced Seal Tech., Inc., B-400088; B-400089, July 14, 2008, 2008 CPD ¶ 137 at 4-5. Moreover, we think the agency made a reasonable effort to obtain information bearing on whether Viking’s part was approved and that Viking had an opportunity to provide evidence for the assertion in its quotation that its item was a previously-approved part.

The protest is denied.

Daniel I. Gordon  
Acting General Counsel