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Decision

Matter of: Acme Products and Engineering, Inc.

File: B-419495

Date: April 5, 2021

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Julie K. Philips, Esq., John Pritchard, Esq., and Pamela K. Cooper, Esq., Defense Logistics Agency, for the agency.
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DIGEST

Protester's contention that agency procurement for compressor rotors from a single approved source unduly limits competition is denied where the record shows that the agency is procuring the approved source item using simplified acquisition procedures and has adequately justified the use of its single approved source approach under the procedures applicable to simplified acquisitions.

DECISION

Acme Products and Engineering Inc., a small firm of Brooklyn, New York, protests the terms of request for quotations (RFQ) No. SPE7M3-21-Q-0093, issued by the Defense Logistics Agency (DLA) for the purchase of compressor rotors. Acme argues that the solicitation unduly restricts competition, as it is limited to a single approved source.

We deny the protest.

BACKGROUND

The agency describes the compressor rotor at issue as a component of the Gardner Denver Nash LLC Model MD-663C low pressure air compressor (LPAC). Contracting Officer Statement and Memorandum of Law (COS/MOL) at 1. The agency further states that the compressor rotor is a major component of the low-pressure service air systems on the United States's submarine fleet, and is identified as a critical application

item.¹ AR, Tab 3, Decl. of Mechanical Engineer of the Compressed Air Systems branch of the Naval Surface Warfare Center, Philadelphia Division (NSWCPD) (Mech. Engineer) at 64. Specifically, the low pressure air compressor is used on all USS Ohio (Submersible Ship Ballistic Missile Nuclear 726) Class, USS Los Angeles (Submersible Ship Nuclear (SSN) 668) Class, and USS Seawolf (SSN 21) Class submarines. *Id.* at 64-65.

Nash is the original equipment manufacturer (OEM), having developed its Model MD-663C low pressure air compressor, including the rotor component identified by national stock number (NSN) 9927.² *Id.* at 65. The agency states that Nash maintains ownership and rights to its proprietary drawings.³ *Id.* The agency also states that it does not own or have rights to Nash's drawing for its Model MD-663C LPAC and its compressor rotor component, identified by part numbers 15-3140-4 and B13-3913-UGS. *Id.* As relevant here, the NSWCPD is the configuration control entity for the compressor motor, meaning that only the NSWCPD can approve sources for the compressor rotor.⁴ *Id.*

At issue in this protest is the agency's determination that only one approved source is available for the acquisition of a compressor rotor that will fulfill its needs. By way of background, the agency states that in 2005, it commenced an effort to reverse engineer the compressor rotor, identified by NSN 9927. *Id.* The agency explains that it undertook this effort to reduce the high procurement costs and reduce the long lead times that were experienced during the prior purchase of the Nash compressor rotors.

¹ DLA defines a critical application item as "[a]n item that is essential to weapon system performance or operation, or the preservation of life or safety of operating personnel, as determined by the military services." Agency Report (AR), Tab 4, Master Solicitation at 171.

² The Nash low pressure air compressor is a positive displacement-type pump consisting of a round, multi-bladed rotor revolving freely in an elliptical casing partially filled with water. AR, Tab 3, Decl. of Mech. Engineer at 64. The curved rotor blades project radially from the hollow hub and form, with side shrouds, a series of chambers around the periphery. *Id.* The rotor revolves within a stationary cone, containing two inlet ports and two discharge ports. *Id.* A motor powers a shaft that spins the rotor at a speed high enough to propel the water outward from the center by centrifugal force at the elongated portion of the elliptical cone, thus drawing inlet air via vacuum, then compressing that air at the narrow portion of the elliptical cone when water is scooped back into the rotor by the blades and subsequently discharged at around 125 pounds per square inch, gauge (PSIG). *Id.*

³ The agency states that it was neither involved in Nash's development of the low pressure air compressor, nor the compressor rotor component. *Id.*

⁴ The NSWCPD is also referred to as the design control activity or engineering support activity. AR, Tab 3, Decl. of Mech. Engineer at 65.

Id. To this end, the agency developed drawings to permit full and open competition, along with a government first article test (GFAT), to ensure part compatibility with the higher-level assembly. *Id.* at 2.

In November 2005, Acme submitted a prototype compressor rotor, manufactured in accordance with the agency's drawings, which initially failed the GFAT. *Id.* at 65-66. In response, the agency changed the output specification, by reducing the requirement by 10%, from 40 standard cubic feet per minute (SCFM) to 36 SCFM. *Id.* at 66. A similar modification was made to Acme's product, and the agency subsequently approved the Acme GFAT sample. *Id.* Acme's compressor rotors, delivered in 2009, however, repeatedly failed to correctly function upon installation in the low pressure air compressor. *Id.* The agency has since determined that Acme's production rotors were visually different from the prototype originally approved under the GFAT, and failed to meet the lowered output specification of 36 SCFM. *Id.* at 66.

In preparation for issuing the present solicitation for compressor rotors, the NSWCPD found that full and open competition for this part was not possible because the agency lacked the requisite complete technical data package (TDP). *Id.* at 67; AR, Tab 6, PR Trailer at 163-164. In this regard, the agency determined that the TDP it possessed, as a result of its efforts to reverse engineer the part, was inadequate.⁵ AR, Tab 3, Decl. of Mech. Engineer at 67. The agency also concluded that the difficulties experienced in the past when it purchased these items from Nash in 2005, *i.e.*, the long waiting times and the high costs, were not likely to occur in a future procurement for compressor rotors. *Id.*

In contrast, the agency points out that an effort to procure the compressor rotors through full and open competition would require the agency to incur a cost of approximately \$150,000--the current cost to conduct 3-dimensional scans and revise the agency drawings--and would take approximately two years. *Id.* The agency also states that after the agency's drawings are revised, a GFAT would then be necessary for any additional vendor's product, such as Acme's compressor rotor, which would take an additional 18 months, and approximately \$250,000. *Id.*

With respect to the protester's ability to satisfy the agency's needs, DLA states that Acme could have attempted to become an approved source, a process different from product development or GFAT. *Id.* The agency explains that Acme could have sought qualification as an additional source after initial development of an end item, a process which requires the submission of a source approval request (SAR) package to the

⁵ The agency states that the exit angle of the rotor blades are critical to the performance characteristics of the rotor, and the drawings do not accurately detail the exit angle of the rotor blades so that the manufactured rotors can meet the minimum output of 36 SCFM. AR, Tab 3, Decl. of Mech. Engineer at 66. The agency also contends that the dimensional tolerances were too relaxed for some dimensions, such as the radii and taper of the vane opening at the rotors inner diameter, resulting in the allowance of an undesired shape to the vane profile which can also impact the output flow. *Id.* at 66-67.

Competition Management Office (CMO) for approval. *Id.* The agency further states that for the on-item tests for a SAR CMO case on this rotor, all of the interfaces, electrical sources hardware, and software had been functioning for years. *Id.* In this regard, the agency emphasized that competing the SAR process was “critically important” because any new sourced compressor rotor would have to interface properly and function reliably with the established hardware and software on a low pressure air compressor designed to operate under extreme shipboard conditions anywhere in the world. *Id.* As relevant here, the agency notes that Acme has not sought to initiate a SAR package to become an approved source. *Id.* at 68.

On December 7, 2020, the agency issued the present solicitation, which sought 13 NSN 9927 compressor rotors. AR, Tab 2, RFQ at 10. The RFQ identified the NSN 9927 compressor rotor as a “critical application item,” and listed the following approved source of supply by Commercial and Government Entity (CAGE) code and part number (P/N): GARDNER DENVER NASH LLC 42280 P/N 15-3140-4 GARDNER DENVER NASH LLC (Nash) 42280 P/N B13-3913-UGS. *Id.* at 13.

The solicitation was issued under Federal Acquisition Regulation (FAR) part 13, simplified acquisition procedures, and incorporated by reference the DLA Master solicitation for Automated Simplified Acquisitions, Revision 74 (Dec. 3, 2020) (Master Solicitation). RFQ at 11.

The master solicitation incorporates by reference Procurement Notes and indicates when each applies. AR, Tab 4, Master Solicitation at 104-157. The master solicitation provides in pertinent part that Procurement Note L04, Offers for Part Numbered Items, applies when items are identified in the item description “only by the name of an approved source (CAGE code), a part number, and a brief description.” *Id.* at 107.

Procurement Note L04(b)(1)-(4) explains that “exact product” means a product described by the name of an approved source and its corresponding part number cited in the item description, and manufactured by, or under the direction of, that approved source. *Id.* at 141-142. A vendor whose product does not meet the criteria of “exact product,” “superseding product,” or “previously approved product,” constitutes an “alternate product.” *Id.* at 142.

Procurement Note L04(h) explains the documentation that may be requested by the contracting officer to evaluate an alternate offer--e.g., data to “cover design, materials, performance, function, interchangeability, inspection or testing criteria, and other characteristics of the offered product.” *Id.* at 143. The Procurement Note also permits such vendors to seek evaluation for future procurements:

If the solicitation does not provide for evaluation of alternate offers for the current procurement, the offeror may submit a request for evaluation of the alternate product’s technical acceptability for future procurements of the same item. The request for evaluation shall cite the national stock

number (NSN) of the exact product and include the applicable level of technical data. The level or technical data that the Government has available for use to evaluate the acceptability of an alternate product offered, and the corresponding level of technical data that must be furnished with an offer of alternate product, will be identified in the item description and/or via correspondence with the appropriate location below.

Id. As noted above, the solicitation indicated the compressor rotor was a restricted source item and required engineering source approval by the government design control activity, NSWCPD.⁶

This protest to our Office followed.

DISCUSSION

Acme has advanced several challenges to the agency's decision to limit this procurement of compressor rotors to one approved source.⁷ Acme primarily contends that the solicitation is unduly restrictive of competition. As discussed below, we find no basis to sustain the protest.⁸

DLA responds that it reasonably limited the RFQ to the approved source because the agency lacks the data needed to specify its needs in greater detail. AR, Tab 3, Decl. of Mech. Engineer at 67; COS/MOL at 5. The agency also states that it did not prepare a written justification for this procurement under FAR section 6.302-1 because the use of such justifications is not required when an agency is using simplified acquisition procedures. COS/MOL at 7; see *also* FAR 6.001(a).

In reviewing DLA's obligations here, we look first to part 13 of the FAR, which establishes the procedures for simplified acquisitions. These simplified procedures are designed to promote efficiency and economy in contracting, and to avoid unnecessary burdens for agencies and contractors, where, in cases like these, the value of the acquisition is less than \$250,000. See FAR 2.101. In a simplified acquisition, agencies

⁶ The agency states that Acme did not submit a quotation and did not request an evaluation of its alternate product. COS/MOS at 4.

⁷ During the development of this protest, Acme withdrew several of its protest grounds. For example, the protester initially challenged the fact that the solicitation lacked justification and approval (J&A) documentation, which the protester alleged was required. Protest at 5. In its agency report, DLA responded that such documentation is not required for a procurement pursuant to FAR part 13, simplified acquisition procedures. COS/MOL at 7. Acme subsequently withdrew this protest ground. Comments at 5 n.4.

⁸ While our decision does not specifically address every argument presented by the protester, we have considered them all and find that none provides a basis upon which to sustain the protest.

are only required to obtain competition to the “maximum extent practicable.” 10 U.S.C. § 2304(g)(3); FAR 13.104; *Information Ventures, Inc.*, B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 at 3.

In using the FAR’s simplified acquisition procedures, an agency can limit a solicitation to a brand-name item where the “contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, brand-name or industrial mobilization).” FAR 13.106-1(b)(1). In such cases, we review protests of sole-source determinations and, as here, the decision to limit the procurement to a brand-name product for reasonableness. *Europe Displays, Inc.*, B-297099, Dec. 5, 2005, 2005 CPD ¶ 214 at 3-4.

Based upon our review of the procurement record, as well as the filings of the parties, we find the agency’s actions here unobjectionable.

As an initial matter, the record establishes that Nash, the OEM, maintains ownership and rights to its proprietary drawings. AR, Tab 3, Decl. of Mech. Engineer at 65. In response to Acme’s claim that the agency owns the drawings for the compressor rotor (Protest at 4; Comments at 1), the agency provided two declarations stating that the agency was not involved in Nash’s development of the low pressure air compressor, and its compressor rotor component. COS/MOL at 1-2; AR, Tab 3, Decl. of Mech. Engineer at 65. While the protester acknowledges the two declarations stating that the agency does not own the TDP for the compressor rotors, Acme contends that these agency officials have no “personal knowledge as to whether the Navy has unlimited rights to the [compressor] rotor drawings.” Comments at 3.

Here, we have no basis to reject the agency’s contention that it does not possess a TDP sufficient for a competitive acquisition of this critical application item. While the protester challenges the personal knowledge of the agency officials that have made these representations, the protester has not provided evidence to support a conclusion that the agency does, in fact, own the TDP in question.

Additionally, the record demonstrates that the agency engaged in reasonable efforts to obtain the TDP. In this regard, the record shows that the agency attempted, through reverse engineering, to develop a competitive TDP for this procurement, but was unsuccessful. After a lengthy reverse engineering effort, described above, the NSWCPD advised the DLA, prior to issuance of the present solicitation, that the available TDP was not sufficient for a competitive procurement for this critical application item. AR, Tab 6, PR Trailer at 163-164.

Thus, the agency record supports the conclusion that Nash, the OEM, maintains ownership and rights to its proprietary drawings for the compressor rotor in question. As stated above, based on this knowledge, the configuration control entity, NSWCPD, approved only Nash as a source for this critical application item. Under these circumstances, especially given that the procurement is valued at less than \$250,000 and the FAR permits a streamlined acquisition approach, we find that the protester

has not established a basis to question the agency's determinations here. FAR 10.001(a)(2)(iii). As a result, we conclude that DLA has demonstrated a reasonable basis for limiting this solicitation to the approved source for the compressor rotor, a critical application item. *Critical Process Filtration, Inc., B-400750 et al.*, Jan. 22, 2009, 2009 CPD ¶ 25.

The protest is denied.

Thomas H. Armstrong
General Counsel