



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aeronautical Instrument & Radio Company

File: B-281635

Date: February 24, 1999

Glade F. Flake, Esq., for the protester.

Deborah A. Gruszczyk-Randall, for BVR Aero Precision Corporation, an intervenor.
Robert S. Karpinski, Esq., Michael J. Cunningham, Jr., Esq., and Eric A. Lile, Esq.,
Department of the Navy, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency is not required to delay award pending inclusion of protester's product on qualified products list (QPL) where protester has had ample opportunity to complete QPL testing over period of years.

DECISION

Aeronautical Instrument & Radio Company (AIRCO) protests the award of any contract under request for proposals (RFP) No. N00383-98-R-0064, issued by the Naval Inventory Control Point (NAVICP) for 81 bearing distance heading indicators, P/N ID-663D/U. The protester asserts that the agency is required to delay award until it has completed testing of its product for inclusion on the qualified products list (QPL).

We deny the protest.

The RFP provided that required items must be procured from sources listed in QPL 22075-14, which provides for qualification inspection and quality conformance testing in accordance with MIL-I-22075C.¹ RFP § C-321a, b. Proposals were due by July 8, 1998. On July 1, AIRCO contacted the agency and provided information showing that it had been an approved source for previous versions of the required indicator, and that it was currently manufacturing and selling the ID-663D/U to the government of Canada and to Lockheed Martin Corporation for incorporation into C-130 aircraft ordered under a U.S. Air Force contract. AIRCO and other offerors submitted proposals by the closing date. By letter of August 19, the contracting officer notified AIRCO that its technical documentation was inadequate for approval

¹QPL 22075-14 (January 30, 1991) lists BVR Aero Precision Corporation and one other firm as the only qualified suppliers.

as a source for the required items, and identified a contact who could provide more information concerning the evaluation. Enclosed and referenced in this letter was a NAVICP source approval brochure, which mistakenly suggested that AIRCO could seek NAVICP source approval for its product, rather than inclusion on the QPL.

On August 19, the Navy issued amendment 0001 to reduce the base period from 2 years to 18 months, in order to open up the possibility that the requirement could be recompleted sooner if AIRCO were able to qualify its product. On August 24, AIRCO filed an agency-level protest challenging the agency's rejecting its proposal without contacting AIRCO regarding further information necessary to cure the deficiencies cited. On October 1, in response to the protest, the agency met with AIRCO. NAVICP clarified to AIRCO that its product had to be QPL-approved, in accordance with the requirements of MIL-I-22075C, and that the source approval brochure erroneously provided to AIRCO was not applicable to this procurement. The agency directed AIRCO to contact Raytheon Technical Services Company, the government's agent for testing the ID-663D/U indicators. AIRCO maintains that NAVICP then agreed to delay award until testing of AIRCO's product was complete, but NAVICP asserts it only agreed to delay the award as long as possible, not indefinitely. AIRCO also maintains that NAVICP agreed to have Raytheon expedite the testing; the Navy denies this.

On November 2, the contracting officer was advised by Raytheon that AIRCO had not provided a unit for testing until the end of October and that, as of November 2, it would take an additional 6 to 8 weeks to complete testing. (The exact date of receipt is unclear, but the record does show that AIRCO did not ship the unit until October 21, and that two more units were hand-carried by AIRCO representatives to Raytheon on October 28. Protester Comments, January 8, 1999, attached "Declaration of Mr. Evo Nicoletti," paragraphs 6, 7, attached packing ticket.) Subsequently, the contracting officer was notified that delivery of the required items was required by April 1999, in order that the aircraft retrofitting program not be disrupted. Because of this urgency and the projected timeframe for completion of AIRCO's product testing, the contracting officer sent AIRCO a November 24 letter in which she denied the agency-level protest and informed AIRCO that the Navy would proceed to award a contract because she did not believe AIRCO could be approved in time for award. One of the factors that influenced this decision was the fact that the Navy had authorized AIRCO to pursue qualification of its product to MIL-I-22075C in May 1993. When testing was not completed within the specified time period, extensions were granted to AIRCO, the last of which was effective until June 30, 1998. However, AIRCO never completed testing, which led the contracting officer to doubt that AIRCO's product met the qualification standards.

Before proceeding to award, the agency issued RFP amendment 0002, which changed the contract to be awarded from requirements-type to a firm quantity of 81 units and calling for delivery within 180 days after award. RFP Amendment 0002, § L-1201, at 1-2. The Navy states that its intention in so amending the RFP

was to meet its immediate needs and postpone the long-term requirement, with a view that AIRCO might become qualified and therefore eligible to compete at a later time. AIRCO filed this protest on December 4. On February 8, 1999, the Navy made a determination that urgent and compelling circumstances made it necessary to make award notwithstanding the protest, pursuant to Federal Acquisition Regulation (FAR) § 33.104(b)(1)(i); award was made to BVR Aero Precision Corporation that same day. Qualification of AIRCO's product was still pending as of that date.

AIRCO argues that the award should have been delayed until qualification of its product was completed, as it claims the agency agreed to do at the October 1 meeting. It maintains that any delay in the qualification of its product from July 1 to October 1 was the fault of NAVICP, due to the erroneous reference in the August 19 letter to the agency's source approval procedures, upon which AIRCO alleges it relied. AIRCO maintains it has cooperated to the fullest extent possible since being advised on October 1 that QPL testing in fact was necessary, and asserts that the delay since then has been the result of NAVICP's failure to arrange for expedited testing with Raytheon.²

A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract if the offeror can demonstrate that its product meets or can meet the approval standards before the date for award. 10 U.S.C. § 2319(c)(3) (1994); Alpha Q, Inc., B-270517, Mar. 14, 1996, 96-1 CPD ¶ 150 at 3. However, there is no requirement that an agency 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); Marc Ave. Corp., B-261968.2, Jan. 11, 1996, 96-1 CPD ¶ 79 at 3. This is particularly true where the offeror contributes to its failure to obtain timely source approval. Saturn Indus., B-261954.3, Jan. 5, 1996, 96-1 CPD ¶ 9 at 5.

The protest is without merit. The agency did nothing to prevent AIRCO from having its product qualified. AIRCO had been aware of the QPL requirement for the item since 1993, and, simply, had failed to complete the required testing despite being granted extensions of time to do so. Thus, when AIRCO's proposal in response to this RFP was rejected in July 1998, it was due, not to some failure by the agency to provide AIRCO an opportunity to qualify, or to an erroneous evaluation of the proposal; rather, it was due to the protester's failure to have its product qualified in a timely manner despite having had every opportunity to do so.

²AIRCO also argues that, because it is a small business, it was incumbent on NAVICP to take steps to expedite its QPL approval, pursuant to FAR § 9.204(a)(2). However, FAR § 9.204(a)(2) speaks only to conditions under which the government may bear the costs of testing for small businesses, and requires neither that agencies provide assistance to expedite qualification testing, nor that they delay award pending QPL approval for small businesses.

See Saturn Indus., supra (offeror which was aware of qualification requirement 2 years prior to procurement had reasonable opportunity to qualify). Indeed, the record establishes that the agency actually has amended the solicitation and voluntarily delayed the award solely to accommodate AIRCO.

The agency correctly asserts that its agreement at the October 1 meeting to delay the award--even if the protester is correct that the agency agreed to an indefinite delay--is irrelevant to the outcome of this protest. This is because, as of October 1, the agency had done nothing improper to delay AIRCO's qualification, and thus was under no legal obligation to delay an award with which it already was authorized to proceed. See Alpha Q, Inc., supra; Marc Ave. Corp., supra. In this regard, we are not persuaded that the agency's erroneous reference to its source selection procedures had any effect on the timeliness of AIRCO's qualification testing. First, AIRCO has been authorized to qualify its product for the QPL since 1993, and hence had to have been well aware of the testing requirements and that the required item had to be QPL-approved. Second, the RFP specifically provided that the indicators had to be procured from sources listed on QPL 22075-14 and had to have undergone testing in accordance with MIL-I-22075C, RFP § C-321a, b, which also states in section 3.1 that indicators furnished under it have to be on the QPL. Third, while the August 19 letter erroneously referred to source approval procedures, it also specifically referred to the QPL, stating that "[i]t is suggested that you take appropriate action to become an approved source listed on the Qualified Products List [P/N] ID663D/U for future procurements," and that "[y]ou are also advised to review . . . MIL-I-22075C(AS) which provides detailed information on qualification procedures." The letter thus was ambiguous at best, and AIRCO reasonably should have sought clarification rather than assuming that the QPL requirement--which was included in the RFP, and of which it long had been aware--no longer applied.

AIRCO maintains, essentially, that the agency has not acted in good faith to qualify its product. However, AIRCO has presented no evidence to this effect, and we will not attribute improper motives to procurement personnel on the basis of inference or supposition. Radalab, Inc., B-225662.2, May 15, 1987, 87-1 CPD ¶ 519 at 4. Moreover, this claim is not supported by the record which, again, shows that the agency has done nothing improper in connection with AIRCO's qualification, and actually has taken steps to assure that AIRCO will have the opportunity to compete for at least a portion of the agency's requirement if and when it becomes qualified.

The protest is denied.

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