



Comptroller General
of the United States

1253108

Washington, D.C. 20548

Decision

Matter of: Camar Corporation

File: B-253016

Date: August 11, 1993

Richard D. Lieberman, Esq., Sullivan & Worcester, for the protester.

Gail Booth, Esq., Marsha M. Wright, Esq., and Ronald M. Pettit, Esq., Defense Logistics Agency, 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 solicitation improperly deprives nonapproved sources of a reasonable opportunity to compete is denied where specified product is required to be produced in accordance with a proprietary drawing revision which the contracting agency does not possess, and where contracting agency has inquired to the original equipment manufacturer as to the nature of the revisions and determined their materiality.

DECISION

Camar Corporation protests the item description contained in request for quotations (RFQ) No. DLA750-93-Q-8516, issued by the Defense Logistics Agency (DLA) for replacement cylinders and linings for single fire and bilge pumps. Camar argues that the RFQ improperly restricts competition by depriving nonapproved sources of a reasonable opportunity to compete.

We deny the protest.

DLA, through the Defense Construction Supply Center (DCSC), is the procuring agency for these cylinders and linings which are to be supplied to the Navy for shipboard use as replacement parts for the existing single fire and bilge pumps manufactured by Warren Pumps, Inc. The RFQ was issued using small purchase procedures on March 8, 1993. The solicitation described the part by its National Stock Number (NSN) and a brief item description; four parts described by the original equipment manufacturer's (OEM) part numbers were designated critical application items. The RFQ also contained DLA's "products offered" clause, which permits firms to offer alternate products not manufactured by the

OEM. Firms offering alternate products are required by the clause to furnish a technical data package which establishes that the offered items are physically, mechanically, electrically and functionally interchangeable with the products identified in the solicitation. The "products offered" clause also advises offerors 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.

DLA previously rejected Camar's proposed alternate parts in response to an earlier RFQ for these items because, among other things, Camar failed to provide Warren drawing No. BS-1192, revision No. 7, with its technical data package; this revision is currently used by Warren to manufacture the part. We denied Camar's protest of the agency's action on the basis that (1) DLA properly rejected Camar's offer for failing to include adequate OEM technical materials; and (2) Camar's offer also properly could have been rejected--even if the firm had furnished the latest OEM technical data--based on other deficiencies in Camar's data package. Camar Corp., B-249250, Nov. 2, 1992, 92-2 CPD ¶ 300, aff'd, B-249250.2, Apr. 1, 1993, 93-1 CPD ¶ 282.

Here, Camar argues that DLA has unreasonably restricted competition by failing to meet its obligation to provide nonapproved sources a reasonable opportunity to compete. Camar states that Warren has refused its request to make revision No. 7 available for sale, as it considers the revision to be proprietary. Consequently, Camar contends that DLA has a responsibility to obtain and provide revision No. 7 to potential offerors, or to identify the materiality of all changes since revision No. 4, the last generally available revision.

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); Kitco, Inc., B-241868, Mar. 1, 1991, 91-1 CPD ¶ 238. Where an agency does not possess sufficient technical data to evaluate the alternate product, it may properly require a firm seeking source approval to provide data from the OEM, even where it may be difficult to obtain that information due to its proprietary nature; so long as the data are reasonably necessary to a thorough evaluation of the alternate product, we will not object to the agency's actions in requiring it. Alpha Tech. Servs., Inc., B-243346, July 23, 1991, 91-2 CPD ¶ 85.

In view of the obligation under 10 U.S.C. § 2319 to furnish nonapproved sources a reasonable opportunity to compete, where, as here, proprietary revisions themselves are

unavailable, the agency should make inquiry to the OEM as to the nature of the revisions, in order to determine their materiality and whether they are necessary for evaluation of the acceptability of the proposed alternate part, Service & Sales Inc., B-247673, June 29, 1992, 92-1 CPD ¶ 545.

Camar asserts that DLA has never inquired of Warren as to the availability of revision No. 7, nor has it made available to potential offerors any copies of revision No. 7, or a description of how this revision differs from revision No. 4.

The agency reports, and the record shows, that on July 21, 1992, DCSC's Technical Operations Division contacted Warren to request details regarding the specific changes that occurred between revision No. 4 and revision No. 7 of the drawing; the next day, Warren responded that it would not specify the changes between the two revisions because it considered the information to be proprietary. Also on July 21, DCSC contacted the Navy to request copies of the drawing and its revision No. 7, as well as information regarding the changes between the two revisions. In its response, the Navy indicated that its rights to the drawing are limited to use only in emergency or war situations, and that it did not possess a copy of the drawing. In September of 1992, pursuant to Camar's prior protest, Warren loaned DCSC a copy of revision No. 7 under an agreement by DCSC that it would not copy the drawing, but use it only for its review in connection with that protest. After it examined the drawing, DCSC determined that the changes made between it and revision No. 4 were material. DCSC subsequently returned the drawing to Warren pursuant to the agreement.

Contrary to Camar's contention, DLA does not have a responsibility to obtain and provide revision No. 7 to potential offerors. As stated above, where, as here, the proprietary revision is unavailable, DLA is required to make inquiry to the OEM as to the nature of the revisions; the record shows that it did just that.

Camar also argues that DLA has not shown that the changes made by revision No. 7 were material, requiring its inclusion in an offeror's technical data package.

Although an agency has a legitimate interest in ensuring the functional integrity of a critical application item by requiring compliance with current design revisions, it would be improper to deny source approval for failure to provide a revision which adds sources and applications that do not affect the item's functionality. See Service & Sales Inc., supra. Here, the agency states that its examination of revision No. 7, pursuant to the prior protest, revealed that

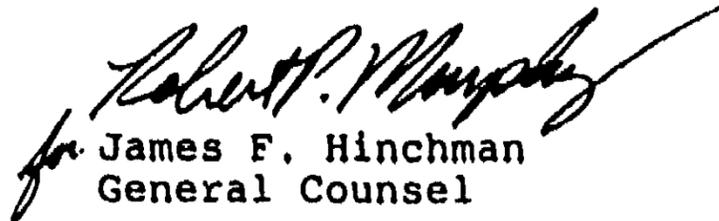
the revision describes the materials currently needed to manufacture the part, and replaces the materials specifications contained in revision No. 4. Unlike other cases in which the agency has merely speculated that revision changes are material, see id., the record shows that DLA actually did examine the drawing and its revision No. 7, and thus had a reasonable basis for making a materiality determination.¹

In its comments on the agency report, Camar argues, for the first time, that the parts may be destined for pumps on ships that have been provided to the Taiwanese Navy under the foreign military sales program. Since these ships are usually quite old, Camar states, they are likely to have the older Warren pumps whose replacement parts may properly be built based upon revision No. 4. This argument is untimely, as it is based upon a coding contained on the face of the solicitation. Since information contained in the RFQ was sufficient to notify the protester of this basis of protest, it should have been raised prior to the time set for receipt of quotations; it was not raised until May 27. In any event, DLA reports that the Navy uses one data package to procure this part for both the U.S. Navy and for foreign navies, and that its current agreement requires the Navy to supply the Taiwanese Navy with parts that meet current Navy standards. DLA also reports that the Navy has a continuous overhaul program that requires regular alterations, many of which are accomplished by incorporating parts with advances in design and other product improvements made by the parts manufacturers. As foreign navies are supplied the same parts, their ships have also received the benefit of product improvements.

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

¹Camar asserts that DLA must demonstrate that the Department of Defense (DOD) has actually examined and approved the configuration changes in revision No. 7 in order to show that the revision is material. We disagree. Configuration control concerns who controls the design changes made to an item, the government or the manufacturer. The government can obtain configuration control of items it buys by part number, thus giving it the right to approve any changes made to the item. Because the government can approve both material and nonmaterial changes, whether DOD has approved the configuration changes in revision No. 7 is not dispositive of the issue of materiality.

interest in ensuring the functional integrity of a critical application item.² The protest is denied.


for James F. Hinchman
General Counsel

²We note that reverse engineering of the part (and the resulting development by the firm of its own drawings) might be a reasonable method for Camar to obtain source approval and thereby become eligible to compete. See id.; Alpha Tech. Servs., Inc., supra.