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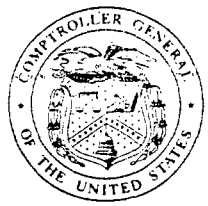
DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-193429 DATE: March 21, 1979

MATTER OF: Davco Incorporated DLG 01260

DIGEST:

1. [Protest alleging that RFP should not have been restricted to specified parts] is untimely under Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), since it was not filed prior to closing date for receipt of proposals.

2. Offer properly was rejected where RFP was restricted to specific part numbers, none of which was offered.

3. Offer containing delivery period which extended beyond desired delivery period was not required to be rejected, since solicitation permitted offer of extended delivery period if desired delivery schedule could not be met.

4. Although system of qualification testing tends to restrict competition, it is legitimate restriction and proper method of procurement and GAO has recognized appropriateness of "approved sources" system of procurement for spare parts.

5. DAR § 1-313 provides for procurement of critical spare parts only from sources that have satisfactorily furnished them in the past when fully adequate drawings and other needed data are not available.

Davco Incorporated (Davco) has protested the rejection of its offer under Department of the Army (Army) request for proposals (RFP) DAAE07-78-R-5226 for the procurement of 29,544 fuel injector nozzles and its subsequent unsuccessful effort to have its part qualified for subsequent procurements.

The RFP provided that the procurement was restricted to the part numbers of three manufacturers --Bendix Corp., American Bosch or Robert Bosch Corp.-- and that sources not currently qualified could offer their nozzles for evaluation and approval for future procurement.

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Four offers were received. Davco offered its own part at a price which was less than that offered by American Bosch. The Davco offer was rejected because it was not for one of the parts to which the RFP was restricted. Award was made to American Bosch.

To the extent that Davco contends that the RFP should not have been restricted to the specified parts, the protest involves an alleged impropriety that was apparent in the RFP prior to the closing date for receipt of proposals. Since this ground of protest was not filed prior to the closing date, it is untimely under the Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978). Alton Iron Works, Inc., B-183955, August 29, 1975, 75-2 CPD 131.

On the question of whether the Davco offer properly was rejected, we conclude that it was, since the RFP stated it was restricted to specific part numbers, none of which was offered by Davco. See Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD 45.

We also conclude that the American Bosch offer containing a 210- to 300-day delivery was not required to be rejected when the RFP specified delivery in 180 to 210 days, since the RFP provided that an offeror could propose an extended delivery period without prejudice to the evaluation of the offer if the offeror could not meet the desired delivery schedule. In that regard, see In-Trol (International Controls), B-184310, October 9, 1975, 75-2 CPD 223, upholding an award to a firm offering delivery within 100 to 120 days where the solicitation expressed a desired delivery date of 30 days and permitted submission of varying delivery periods.

As to its attempt to become qualified for future procurements, Davco has objected to the contracting agency requiring it to have its product tested before becoming qualified. It contends that the contracting agency does not have a test procedure and that, if the agency does, the cost of testing restricts a small business firm like Davco from qualifying.

The contracting agency has indicated that it does have a test procedure and that it did not furnish the details to Davco because Davco indicated it was unwilling to bear the cost of testing.

In 36 Comp. Gen. 809, 815 (1957), our Office recognized the restrictive aspect of qualification testing. We said:

> "To the extent that the cost of qualifying a product is significant, and is required to be borne by the prospective supplier, the requirement that products be 'qualified' before bids will be considered for award clearly tends to restrict competition, particularly as to small business firms, since it may be assumed that a small firm cannot readily afford to invest substantial amounts of money to qualify products on the mere possibility that it be awarded a contract. * * *"

However, we went on in the decision to uphold the qualified products system as a legitimate restriction and proper method of procurement. Moreover, our Office has recognized the appropriateness of the "approved sources" system of procurement for spare parts. 52 Comp. Gen. 546 (1973); B-174868, July 14, 1972.

Davco has questioned the propriety of procuring the nozzle as a critical part when the contracting agency does not have adequate drawings and quality control. However, the Defense Acquisition Regulation (DAR) provides for the procurement of such spare parts only from sources that have satisfactorily furnished them in the past when fully adequate drawings and other needed data are not available. See DAR § 1-313 (1976 ed.).

Based on the foregoing, the protest is denied. However, where there is nothing in the record to show that the Government has attempted to obtain from the approved manufacturers data upon which a more competitive solicitation could be based, recommendations have been made for considering obtaining the data from those manufacturers. Metal Art, Inc., B-192901, February 9, 1979. This suggestion is being made to the

Secretary of the Army by separate letter of today, since, if the data were obtained, that might preclude the necessity for qualification testing of the Davco part.

R.F. Keller

Deputy Comptroller General
of the United States