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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: Barnes Aerospace Group

File: B-298864; B-298864.2

Date: December 26, 2006

Jason A. Carey, Esq., Todd J. Canni, Esq., Kara M. Klaas, Esq., and John G. Horan, Esq., McKenna Long & Aldridge, for the protester.

Randall W. Sweeney for Ferrotherm Corporation, an intervenor.

Capt. Christopher M. Schumann, Department of the Air Force, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that the agency unreasonably delayed acting on the protester's request to become an approved source is denied where the record shows that the delay was not unreasonable.
 2. Protest challenging sole-source procurement justified on the ground that only one source is available is sustained where the record shows that the presolicitation notice generated an expression of interest from a second source that has made significant progress towards becoming an approved source under the agency's source approval rules, and the remaining time required for approval is not long; as a result, a sole-source award, without considering the viability of the second source as part of the justification and approval process, is improper.
 3. Protest is sustained where the record shows that the agency treated offerors unequally with respect to the application of its qualification requirements by requiring that a source seeking approval follow qualification rules while ignoring requalification requirements in those same rules for a previously approved source.
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DECISION

Barnes Aerospace Group protests the decision of the Department of the Air Force to award a sole-source contract to Ferrotherm Corporation under request for proposals (RFP) No. FA8104-06-R-0276, issued to procure the repair of certain F100 engine parts. Barnes argues that the Air Force unreasonably delayed review of Barnes' request for source approval, and awarded to Ferrotherm at an unreasonable price. In a supplemental protest, Barnes argues that the agency has unfairly required

Barnes to comply with the agency's source approval rules, while ignoring requalification requirements in those same rules with regard to Ferrotherm.

We sustain the protest.

BACKGROUND

On March 1, 2006, the Air Force posted a presolicitation notice on the FedBizOpps website for repair of the third-stage air sealing ring segments (hereinafter, the "ring segments") for the F100 engine. The notice advised that the solicitation for the repair of approximately 18,900 ring segments would soon be issued. The notice indicated that award would only be made to an offeror qualified as an approved source by the date of award, and that Ferrotherm Corporation was the only approved source for these repairs. In this regard, the notice also indicated that:

The government is not required to delay contract award to review pending Source Approval Requests (SARs). Therefore, offerors are encouraged to submit SAR[s] as soon as possible. If the government has not completed review of a SAR when the contract is awarded, the SAR will be retained and the source will be reviewed for possible source approval for future awards.

Agency Report (AR), Tab 8, at 2. Five days later, by letter dated March 6, Barnes asked to be approved as a source for repair of the ring segments. Shortly thereafter, Barnes submitted the requisite information to begin the SAR process. AR, Tab 32.

Prior to issuance of the presolicitation notice, the Air Force executed a justification and approval (J&A) document authorizing a sole-source purchase of repairs for the ring segment, citing the authority at 10 U.S.C. § 2304(c)(1) (2000), and Federal Acquisition Regulation (FAR) § 6.302-1(b)(1).¹ AR, Tab 7, at 3. The J&A indicated that the ring segment is considered an "aviation safety critical item," that its repair could only be undertaken by an approved source, and that Ferrotherm was the only approved source.² *Id.* at 3. Of relevance here, the J&A also indicated that "[t]his is

¹ The J&A document is dated February 28, 2006, on each page; the signature of the Competition Advocate, who appears to be the final signature authority, is dated March 10, 2006. AR, Tab 7, at 1. Thus, the J&A was prepared prior to publication of the March 1 presolicitation notice, and approved before the April 14 due date for expressions of interest in answer to the notice.

² We interpret the J&A's use of the term "aviation safety critical item" to be a reference to an "aviation critical safety item," which means

the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause a catastrophic or critical

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the first contract repair for the [ring segments] . . . [and that] repair was previously done in house at [the Oklahoma City Air Logistics Center].” Id. While the J&A justified a sole-source award to Ferrotherm for a 2-year base period, followed by three 1-year options, it provided that:

Should a source other than Ferrotherm become approved or qualified during the performance of the contract authorized by this J&A, this J&A shall not be used as the authority for other than full and open competition for the exercise of any option subsequent to approval of the additional source.

Id.

On April 14, the Air Force issued the solicitation announced by the March 1 notice. The RFP anticipated the award of a fixed-price contract, also with a 2-year base period, and up to three 1-year option periods, to the lowest-priced, technically acceptable offeror. RFP at 5-8, 39. Both Barnes and Ferrotherm submitted offers by the May 15 due date.

The SAR process that Barnes initiated shortly after the publication of the presolicitation notice is covered by an internal set of Air Force rules entitled, “Repair Qualification Requirements for Parts Requiring Source Demonstration” (hereinafter, the “RQRs”). AR, Tab 32. The RQRs identify a two-part process for review of an SAR. Part I of the SAR process involves submission of documentation, including proof of satisfactory repair of production quantities of similar items; Part II involves a demonstration of capability through contractor repair and Air Force inspection of the repaired part. AR, Tab 32, RQRs at 4-9. Barnes submitted its documentation for Part I of the SAR process on March 29.

On April 19, an Air Force engineer made a preliminary recommendation that Barnes’ Part I SAR be approved. Supplemental (Supp.) AR, Declaration of Cognizant Engineer, Nov. 14, 2006, at 1. Three months later, on July 20, the cognizant engineer approved that preliminary recommendation. Barnes advises that it received preliminary notification that it had received Part I approval through receipt, on August 10, of an August 8 memorandum from the Engineering Section Chief. Protester’s Final Comments, Nov. 6, 2006, at 8. More formal notice was provided by letter dated August 23 from the Air Force Small Business Office, Source

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failure resulting in the loss of or serious damage to the aircraft or weapon system, an unacceptable risk of personal injury or loss of life, or an uncommanded engine shutdown that jeopardizes safety.

10 U.S.C. § 2319(g)(1).

Development Specialist. AR, Tab 23. To date, the Air Force has not provided a part for Barnes to repair so that it can complete the second part of the approval process.

On September 13, the Air Force made award to Ferrotherm, pursuant to the pending RFP. Barnes was not provided notice of the award decision, but discovered an announcement of the award on the FedBizOpps website on September 14. This protest followed.

DISCUSSION

Barnes argues in its initial protest that the agency unreasonably delayed approval of the company to be a qualified source for the repair of these parts, and failed to engage in sufficient advance planning to permit enough time for new sources to become approved.³ Barnes' argument that Ferrotherm does not appear to be currently qualified as a source was raised as a supplemental protest issue after receipt of the agency report. We turn first to the initial protest issues.

Reasonable Opportunity to Qualify and Advance Planning

The Competition in Contracting Act of 1984 (CICA) requires that an agency obtain full and open competition in its procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). An exception to this general requirement is where there is only one responsible source able to meet the agency's requirements. 10 U.S.C. § 2304(c)(1); HEROS, Inc., B-292043, June 9, 2003, 2003 CPD ¶ 111 at 6. This is the exception cited in the J&A here.

CICA further mandates, however, that noncompetitive procedures may not be used due to a lack of advance planning by contracting officials. 10 U.S.C. § 2304(f)(5); New Breed Leasing Corp., B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6; TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700 at 5. Our Office has recognized that the requirement for advance planning does not mean that such planning must be completely error-free, see, e.g., WorldWide Language Resources, Inc.; SOS Int'l Ltd., B-296984 et al., Nov. 14, 2005, 2005 CPD ¶ 206 at 12, but, as with all actions taken by an agency, the advance planning required under 10 U.S.C. § 2304 must be reasonable. Id.

³ Barnes also argued initially that the agency failed to prepare a justification for what was, in essence, a sole-source contract, and that the agency awarded at an unreasonable price. The record shows that the Air Force did, in fact, prepare a J&A for this procurement; thus, other than arguments in the protester's comments about the adequacy of the J&A, this challenge need not be considered further. In addition, Barnes made no further mention in its comments, or supplemental comments, of its contention that award was made at an unreasonable price; accordingly, we view this issue as abandoned.

In addition, when a contracting agency restricts a contract to an approved product or source, and uses a qualification requirement, it must give other offerors a reasonable opportunity to qualify. Lambda Signatics, Inc., B-257756, Nov. 7, 1994, 94-2 CPD ¶ 175 at 4; Advanced Seal Tech., B-250199, Jan. 5, 1993, 93-1 CPD ¶ 9 at 3; see 10 U.S.C. § 2319(b). This opportunity to qualify includes ensuring that an offeror is promptly informed as to whether qualification has been attained and, if not, promptly furnishing specific information why qualification was not attained. Advanced Seal Tech., supra. Failure to act upon a potential offeror's request for approval within a reasonable period of time deprives the requester of a reasonable chance to compete and is inconsistent with the CICA mandate that agencies obtain full and open competition through the use of competitive procedures. Lambda Signatics, Inc., supra; Advanced Seal Tech., supra.

With respect to Barnes' allegation that the Air Force unreasonably delayed approving the company as a source of these repairs, we think the record does not support this conclusion. As indicated above, the presolicitation notice was published on March 1 and Barnes expressed interest in becoming an approved source on March 6. In response, the Air Force provided Barnes with instructions for becoming an approved source, and Barnes made its initial SAR submission on March 29.

Barnes argues that an unreasonable amount of time elapsed between preliminary approval of its Part I SAR submission on April 19, and the final approval of the Part I submission by the cognizant engineer⁴ on July 20, which was not formally communicated to Barnes until a month later, on August 23. In response to Barnes' contention, the Air Force provided a sworn declaration from its cognizant engineer detailing the events between the April 19 preliminary approval and the engineer's final approval of Barnes' Part I SAR submission on July 20.

In his declaration, the cognizant engineer provides details regarding higher-priority assignments between mid-April and mid-July that delayed his review of Barnes' SAR submission. Supp. Memorandum of Law, Declaration of Cognizant Engineer, Nov. 14, 2006, at 1-2. While we have concerns about the relatively low priority the cognizant engineer placed on reviewing Barnes' SAR submission—especially given the requirement that agencies complete such reviews as expeditiously as possible—several of the items identified by the agency's engineer as causes for his delay also involved serious and important matters. Declaration at 2.

⁴ When a potential offeror seeks to become an approved source to provide or repair an "aviation critical safety item," approval authority rests not with the contracting authority, but with the head of the design control activity for the item. 10 U.S.C. § 2319(c)(3).

We are similarly concerned about the unexplained lapse of time between the cognizant engineer's completion of his review on July 20, and the ultimate communication of the results to Barnes on August 23. Under the Air Force RQRs, a source seeking approval generally must receive notice that its documentation has been approved before it can move to the demonstration phase of the approval process. AR, Tab 32, RQRs at 3, 8. This lapse in providing notice of Part I approval—even more than the engineer's delay—suggests that the Air Force could improve its performance in processing requests such as these. Nonetheless, given the explanations in the record from the engineer, and the relatively short amount of delay for which there is no explanation, we are not prepared to conclude, on this record, that the agency has acted unreasonably in processing Barnes' SAR.

With respect to Barnes' argument that the agency failed to conduct adequate planning for this procurement, we again think the record does not support such a conclusion. In Barnes' view, the agency essentially concedes it failed to conduct advance planning because it acknowledges⁵ that the time required to become an approved source of this part will likely be longer than the time available to procure it. We think Barnes' contention is incorrect. Where, as here, the approval process involves an aviation critical safety item, there is no dispute that the review process can be quite involved. In apparent recognition of situations like this, the applicable statute and regulations expressly provide that agencies need not delay proposed procurements in order to provide potential offerors enough time to become qualified. 10 U.S.C. § 2319(c)(5); FAR § 9.202(e). The absence of a requirement to delay a procurement while waiting for a potential offeror to become qualified, together with the opportunity to become qualified independent of a pending procurement action, leads us to conclude that an agency's inability to withhold award until completion of the approval process, on its own, is not sufficient evidence to conclude that the agency unreasonably failed to conduct adequate advance planning.

Moreover, the record shows that past repairs of this part were done in-house (by Air Force personnel) at the Oklahoma City Air Logistics Center, but that "in-house resources are unable to repair [this part] in the quantity required." AR, Tab 7, J&A at 2. While the protester correctly points out that estimates of the agency's repair needs for these parts have existed for several years, we think the workload capacity of the Air Logistics Center gives an added layer of complexity to the planning issues. Specifically, the need to now procure these items commercially (rather than repair them in-house), without waiting for completion of the SAR process, has been generated by both the need for the parts themselves, and limitations in the Air Logistics Center's ability to meet that need in-house. We have reviewed the information in the record, and the arguments raised by the protester, and under the

⁵ Contracting Officer's (CO) Statement, Nov. 8, 2006, at 6.

circumstances here, we cannot conclude that the need to now procure these parts resulted from a failure of adequate planning.

Adequacy of the J&A

Although Barnes was not aware of the J&A here when it first filed its protest, its argument about lack of advance planning relates more to the adequacy of the agency's sole-source J&A, than to its argument that the agency unreasonably delayed approving its SAR submission. In its comments, Barnes complains that the J&A was improperly prepared before the agency issued its presolicitation notice--not to mention before potential offerors were given a reasonable opportunity to become qualified sources. In addition, Barnes questions the agency's commitment to approving new sources to obtain competition given that it had already prepared and executed a sole-source J&A claiming that there was only one responsible source for these repairs.

As set forth in greater detail below, while it is not improper *per se* for agencies to execute sole-source J&As on the basis that there is only one responsible source available before the time they have received expressions of interest and capability from potential offerors, the record here shows that the agency failed to consider the information that was generated as a result of the presolicitation notice. In our view, the failure of the Air Force to consider Barnes as a potential source renders unreasonable the conclusions on which the J&A is based.

There is no dispute in this record that the sole-source J&A here was prepared and executed before potential offerors were invited to demonstrate their capabilities. The J&A is dated February 28, 2006; the signature of the Competition Advocate on the J&A is dated March 10. AR, Tab 7. The presolicitation notice was published March 1, and companies interested in being considered as sources for the repair of these parts were given until April 14 to express interest in the upcoming procurement. AR, Tab 8, at 1.

The statutory authorization at 10 U.S.C. § 2304(c)(1) to use other than full and open competition when there is only one responsible source is implemented in the FAR by section 6.302-1. This implementing regulation provides that "[f]or contracts awarded using this authority, the [required] notices . . . shall have been published and any bids and proposals must have been considered." FAR § 6.302-1(d)(2). There is also no dispute that the presolicitation notice issued here--inviting potential offerors to establish their qualifications to be approved sources for these repairs--is a required notice.

We think agencies undercut their credibility when they prepare and execute sole-source J&As on the basis that there is only one responsible source available, before the time they have received expressions of interest and capability from potential offerors. The entire purpose of issuing notices seeking expressions of

interest and capability is to avoid the need for such sole-source procurements, if possible. Thus, we agree with Barnes that the timing of the J&A here was inconsistent with a request for potential offerors to establish their qualifications to compete. M.D. Thompson Consulting, LLC; PMTech, Inc., B-297616, B-297616.2, Feb. 14, 2006, 2006 CPD ¶ 41 at 5 n.6.

That said, FAR § 6.302-1(d)(2) states only that these notices shall have been published for contracts awarded using this authority, and that any bids and proposals must have been considered. As a result, we cannot say that the Air Force's actions in preparing and executing its sole-source J&A before receiving and considering expressions of interest and capability violate a statute or regulation.⁶ See WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ 626 at 3 ("While notice of the agency's intent to issue a sole source contract generally is to precede preparation of the justification under [CICA]," issuance of the notification after the justification is prepared does not affect the validity of the justification.).

Although there may be no legal restriction against executing a J&A on the grounds that only one source is available in advance of seeking and considering expressions of interest, we think doing so may increase the risk that an agency's market survey, and other bases for its sole-source decision, will ultimately be shown to be unreasonable. In fact, the record here presents just such a situation.

The presolicitation notice here, once issued, generated an expression of interest from a second source, Barnes, that completed the first stage of the agency's two-stage approval process before the award was made. Barnes has advised that as soon as the Air Force provides it a part to repair, it will complete the repair and return the part for inspection within 10 weeks; the Air Force has not contested this representation or suggested that the timeframe is unrealistic. In addition, there is no indication in this record that Barnes is an offeror that will not be able to successfully complete this process.⁷ The record here shows that the Air Force

⁶ In addition, the Air Force recognized that subsequent events might change the validity of its J&A. As noted above, the J&A indicated that if other sources became approved or qualified during performance of this contract, the J&A could not be used to justify the exercise of any options after a second source was approved. AR, Tab 7, J&A at 3.

⁷ In fact, during a conference call with all parties, Ferrotherm's representative spoke highly of Barnes' capability, and indicated that the two companies sometimes work together. He also indicated that while Ferrotherm is a licensed repair source for Pratt and Whitney, Barnes is a licensed repair source for General Electric (GE). Seeking to confirm his representation, we reviewed Barnes' website (www.barnesaero.com), which indicates that Barnes is certified to repair aircraft engines for Pratt and Whitney, Rolls Royce, GE, American Airlines, United Airlines, Northwest Airlines, U.S. Airways, and Delta. Simply put, nothing in the record

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could have a second source approved for the repair of these parts in a matter of months.⁸ As a result, we think it was unreasonable for the Air Force to justify this award for a two-year base period. We also think the J&A unreasonably concluded that Ferrotherm is the only approved source, since the agency failed to address the potentially imminent qualification of Barnes as an approved source before proceeding with the sole-source award to Ferrotherm. In other words, the agency proceeded on the basis of a J&A that did not include any consideration of Barnes' status as a viable source, as reflected by its expression of interest and completion of Part I of the source approval process. We, therefore, sustain the protest on this ground. Cf. ABA Indus., Inc., B-250186, Jan. 13, 1993, 93-1 CPD ¶ 38 at 6-7 (although agency was not required to delay award until protester could become qualified, it was unreasonable to deprive the protester of an opportunity to compete for any portion of the procurement that could await completion of the protester's qualification review).

Equal Treatment of Offerors under the RQRs

We think there is an additional problem with the J&A's designation of Ferrotherm as the only approved source for the repair of these parts which renders the J&A defective. Barnes' final contention, raised after receipt of the agency report in this protest, is that the Air Force has provided no evidence showing that Ferrotherm remains a qualified source under the Air Force qualification procedures. Based on our review of the record--and after twice inviting the Air Force to supplement the record with evidence to refute the contention that Ferrotherm's status as a qualified source appears to have lapsed under the Air Force RQRs--we agree. The reasons for our conclusion are set forth below.

Barnes' initial protest filing requested all documents related to the qualification of Ferrotherm to provide these parts. The CO responded to this request as follows:

Ferrotherm was qualified while the F100 engineering area was still at Kelly [Air Force Base]. Those records were lost in the move to Tinker. See Tab 33 for the letter sent to contracting with the purchase request.

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suggests that either of these companies lacks the capability to repair, and cannot qualify to repair, Air Force engine parts--even those parts considered critical for aviation safety.

⁸ In fact, the Air Force could have already completed this process. Substantially more than 10 weeks have elapsed since the Air Force approved Barnes' Part I submission on July 20, and the agency has yet to provide Barnes with a part to repair so that it can complete the approval process.

CO's Statement, Nov. 8, 2006, at 10. The referenced letter, provided at Tab 33 in the agency's report, was dated August 16, 2005. The text of the letter is set forth below in its entirety:

1. The following are approved sources for repair of the 3rd Stage Air Sealing Ring Segments.

Ferrotherm, Cleveland, Ohio (Cage 01993)

2. The above sources are approved to repair the following items

NOUN: 3rd Stage Air Sealing Ring Segments

P/N: 4083716

NSN: 2840-01-445-4017NZ

3. Source approval was based on these companies satisfactorily repairing the subject items.

4. Questions concerning this matter should be addressed to [omitted].

AR, Tab 33.

In a supplemental inquiry, filed after receipt of the agency report, Barnes asked if the Air Force had any other information, from any source, regarding the process by which Ferrotherm was qualified, and how long it took to complete that process. In reply, the Air Force advised that it had no such documents and detailed the extent of its search. In addition, the agency answered:

Other than the Qualified Repair Source List (QRSL) listing indicating Ferrotherm was in fact qualified and the date of their qualification, the Agency was unable to locate any additional information concerning the Ferrotherm repair approval process for the 3rd stage ring segment, P/N 4083716-01, NSN 2840-01-445-4017. This approval was performed by San Antonio-ALC on 19 Jun 00 during the transition of the F100 Engineering Office from SA-ALC (Kelly AFB, TX) to Oklahoma City-ALC (Tinker AFB OK).

Letter from the Air Force to GAO, Nov. 1, 2006.

As described above, Barnes supplemented its earlier protest on November 6. In this filing, Barnes argued that, based on the record, it did not appear that Ferrotherm had ever been requalified—or in the words of the RQRs, “resubstantiated”—since the company was approved to repair this part in June 2000. Barnes argued that it was unfair to require its strict compliance with the qualification rules, and not apply those rules to Ferrotherm.

Upon receipt of Barnes' supplemental protest filing, our Office reviewed the RQRs that had been provided with the agency report. Just as these rules contain stringent requirements for source approval, they also establish standards governing how an approved source retains its status. Specifically, these rules state:

Engineering source approval shall be valid for three years from the date of the OC-ALC letter notifying the contractor of engineering source approval. Approved sources will be required to resubstantiate their capability every three years. Resubstantiation shall involve documenting that no significant changes to process location, sequence, or parameters have occurred, the offeror has the applicable current drawings, latest technical orders, and specifications, and no significant quality deficiencies are awaiting corrective action. Significant changes or unresolved quality deficiencies may result in additional testing, or revocation of source approval status, depending on the nature and extent of the changes and/or quality deficiencies. Resubstantiation is valid for three years from the date approval would expire and may be submitted six months prior to previous approval expiration or up to 2 years after. Resubstantiation outside of this limit is not allowed without cognizant engineering authority waiver which is not normally granted. If resubstantiation is not allowed a full SAR per this RQR is required.

AR, Tab 32, RQR Rules at 4.

On November 7, our Office asked the Air Force to respond to Barnes' single supplemental protest issue. Noting the lack of evidence in the record on this issue, we asked:

What is the Air Force position regarding when and whether the intervenor, Ferrotherm, was approved and requalified to provide these services? See Barnes Comments, Nov. 6, 2006, at 3, 11-12. On this subject, since Ferrotherm is an intervenor here, it may be able to provide evidence of its requalification to the Air Force to help the agency answer this question.

GAO Facsimile to All Parties, Nov. 7, 2006, at 2.

In a supplemental filing the Air Force addressed the protester's comments and the newly-raised protest issue. On the subject of Ferrotherm's qualification, the agency advised only that Ferrotherm, in response to the inquiry from our Office, had provided it with a copy of a Technical Order (TO) containing maintenance instructions for the F100 engine. The TO, on its face, identifies Ferrotherm as an approved source for repairs of the part at issue here, and indicates that Ferrotherm was approved on June 19, 2000. Air Force Supp. Memorandum of Law, Nov. 15, 2006, attach. 1, at 5. In addition, the Air Force argued that the August 16, 2005, letter

signed by the Chief Engineer indicating that Ferrotherm is an approved source--the same letter provided with the agency report at Tab 33, and quoted in its entirety above--indicates "that as of that date Ferrotherm was in fact an approved source." Air Force Supp. Memorandum of Law, Nov. 15, 2006, at 8.

In our view, the August 16, 2005, letter signed by the Chief Engineer did not establish "that as of that date Ferrotherm was in fact an approved source." *Id.* As set forth above, the Air Force RQRs require that after 3 years, and not more than 5 years, the agency will resubstantiate its approved sources by documenting: (1) that no significant changes to process location, sequence, or parameters have occurred; (2) that the offeror has the applicable current drawings, latest technical orders, and specifications; and (3) that no significant quality deficiencies are awaiting corrective action. Instead of providing any reference to these concrete requirements, the August 16, 2005, letter, is, in essence, a form letter where engineering personnel identify for contracting personnel the approved sources for needed parts. As quoted above, the letter is written broadly to allow the engineers to identify one source or many. Engineering personnel also identify the name of the part, its part number and its stock number.

On December 11, during a status conference with all the parties to this protest, our Office again pointed out that none of the information provided to date indicated that Ferrotherm had ever been resubstantiated on this part since its approval in June 2000. In response, the Air Force provided a final filing, dated December 13, and a second declaration from its cognizant engineer. On the subject of whether the agency ever applied its RQRs to Ferrotherm, the cognizant engineer points out four facts that he contends "were considered to resubstantiate Ferrotherm's approval." Letter from the Air Force to GAO, Dec. 13, 2006, Declaration of Cognizant Engineer at 1. These facts are that:

- (1) Ferrotherm is listed on the qualified repair source list which shows its initial approval on June 19, 2000;
- (2) "Ferrotherm was resubstantiated as a qualified source on the similar F100-220 4th stage ring segment on 9 February 2004";
- (3) "Ferrotherm is currently repairing the similar F100-229 3rd and 4th stage air sealing ring segments for Pratt and Whitney"; and
- (4) "Ferrotherm is licensed for and repairs the subject parts for Pratt and Whitney."

Id. In addition, the cognizant engineer contends that the August 16, 2005, letter to agency contracting personnel (identifying the needed part number and the qualified source) represented a waiver decision by the Air Force. Specifically, he states:

The engineer determined that these facts were enough substantiation to list Ferrotherm as an approved and qualified source. According to [the RQRs], a waiver is required for an organization that has not repaired the subject item within the last 5 years for the government. This is the case for Ferrotherm. The engineer determined that Ferrotherm was an approved source based on the above information and generated the approval letter. This approval letter waives [sic] the requirements of [the RQRs].

Id.

The process described by the cognizant engineer is not consistent with the requirements of the RQRs in several ways.⁹ Most importantly, the waiver provision in the RQRs' resubstantiation requirements permits a waiver of the time allowed for resubstantiation, not the need for it. The relevant portion of the RQRs state:

Resubstantiation is valid for three years from the date approval would expire and may be submitted six months prior to previous approval expiration or up to 2 years after. Resubstantiation outside of this time limit is not allowed without cognizant engineering authority waiver which is not normally granted. If resubstantiation is not allowed a full SAR per this RQR is required.

AR, Tab 32, RQRs at 4 (emphasis added). To the extent the Air Force wants to waive the time limits required for resubstantiating Ferrotherm's status as an approved source--and we read the cognizant engineer's declaration to indicate that it does--the Air Force may elect to do so. The fact remains, however, that nothing in this record--and none of the facts identified in the cognizant engineer's second declaration--meets the Air Force's own standards for resubstantiation. These standards require documenting: (1) that no significant changes to process location, sequence, or parameters have occurred; (2) that the offeror has the applicable current drawings, latest technical orders, and specifications; and (3) that no significant quality deficiencies are awaiting corrective action. Id. Only when the Air Force completes these actions will Ferrotherm have been resubstantiated as an approved source for these parts.¹⁰

⁹ For example, in the quote above the cognizant engineer incorrectly explains that resubstantiation (or a waiver of it) is required when a firm has not repaired the item for the government within the last 5 years. In fact, even if an organization has repaired an item throughout the last 5 years, the RQRs still require that approved sources be resubstantiated. AR, Tab 32, RQRs at 8.

¹⁰ Barnes also argues that our Office should conclude that the Air Force has not established that Ferrotherm was ever properly qualified as a source for these parts. Although we agree that neither the Air Force nor Ferrotherm has conclusively

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In our view, the Air Force treated these offerors unequally with respect to the application of its qualification requirements. While we think the Air Force can reasonably insist that Barnes follow every step required to becoming an approved source under the agency's RQRs, we do not think the agency can disregard those requirements as they apply to Ferrotherm's status as an approved source. It is a fundamental principal of government procurement law that an agency must treat all offerors equally and evaluate them consistently. Infrared Techs. Corp--Recon., B-255709.2, Sept. 14, 1995, 95-2 CPD ¶ 132 at 4. Since we think the Air Force abandoned that principle here, we sustain Barnes' protest.

RECOMMENDATION

Although we conclude that the J&A here was flawed, we recognize the agency's need to obtain these repairs from approved sources. As the record here reflects, however, the status of both Ferrotherm and Barnes as approved sources for the repair of these parts is unresolved.

We recommend that the Air Force proceed with approving sources for the repair of these parts. With respect to Ferrotherm, the Air Force should ascertain the firm's precise status, and either resubstantiate Ferrotherm as a source for these repairs in accordance with its own rules, or require the company to undergo the source approval process in the same manner as Barnes. The Air Force should also proceed as expeditiously as possible with providing a part for repair to Barnes so the process can be completed. At the conclusion of the source approval process, the Air Force should proceed, if appropriate, with a competition to meet its needs.

Because we conclude that the current sole-source award to Ferrotherm was not properly justified, we recommend that the Air Force terminate this award. If the Air Force has an urgent need for repair of some number of these parts (which has not been asserted during this protest), and if the agency cannot meet that need by repairing the parts in-house (which it has done for several years), we recommend

(...continued)

established that the initial approval was completed--or was accomplished under rules similar to those here--we will not reach such a conclusion based on this record. We note in this regard that the Air Force has advised that its records were lost when the previous Air Logistics Center that performed this function was closed and its functions transferred to the Oklahoma City Air Logistics Center. CO's Statement, Nov. 8, 2006, at 10. Since we recognize that Ferrotherm is a licensee of Pratt and Whitney for the repair of these parts, and since there are several documents in this record that include the same precise date (June 19, 2000) when Ferrotherm was apparently approved as a source, we will not question further whether Ferrotherm's initial approval was proper.

that it prepare a new justification and award a contract for any urgently-needed portion of the repairs.

We also recommend that the agency reimburse the protester the costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2006). As required by section 21.8(f) of our Regulations, Barnes' claim for such costs, detailing the time expended and the cost incurred, must be submitted directly to the agency within 60 days of receiving this decision.

The protest is sustained.

Gary L. Kepplinger
General Counsel