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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: CM Manufacturing, Inc.

File: B-293370

Date: March 2, 2004

Ken Johnson for the protester.

Curtis D. Elton, Esq., Department of the Air Force, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency did not deny protester the opportunity to qualify as a source for solicited part by failing to include in the solicitation a description of required anodizing procedures for the item being procured where those procedures were clear from information furnished to the protester and where engineer responsible for qualification personally explained to the protester the required anodizing process and the reason for it while reviewing its qualification request.

DECISION

CM Manufacturing, Inc. protests the award of a contract to Goodrich Landing Gear under request for proposals (RFP) No. F42630-03-R-3424, issued by the Department of the Air Force for bungee assemblies for the F-15 aircraft. The protester contends that the Air Force denied it the opportunity to qualify as a source for the item prior to the date of award by failing to include in the RFP information that it required to obtain a waiver of the qualification requirements.

We deny the protest.

The RFP notified prospective offerors that the acquisition was restricted to qualified sources and identified as approved sources Goodrich and four other firms, not including the protester. The solicitation advised that to become a qualified source, an offeror would be required to provide a pre-contract award qualification article meeting the requirements of the engineering drawings, material specifications, and process drawings; it also provided for the possibility of waiver of the above requirement, however, as follows:

An offeror who has had previous experience in the manufacture and qualification of items, which can be correlated with this product, may apply to the design control authority at [Hill Air Force Base] for a waiver of the above stated qualification requirements.

RFP, Source Qualification Requirements, at 2. The RFP went on to note that “[t]his waiver will be granted if and only if the design control authority . . . can establish the qualifications of the offeror through the evaluation of written inputs from the offeror or from previous knowledge of the offeror’s capabilities or from previous experience with the offeror on similar item acquisitions,” and that “[t]he current acquisition need not and will not be delayed in order to provide an offeror with an opportunity to meet the requirements for qualification waiver.” Id.

The protester requested, but was not granted, a qualification waiver prior to the date of award. On November 25, the agency awarded a contract to Goodrich.¹

The Air Force engineer responsible for qualifying new sources for the bungee assembly explains that CM submitted a “qualification by similarity” package claiming that it had produced a part similar to the one sought, but that he determined that CM could not be considered a qualified source based on its allegedly similar item because the similar item did not undergo the same anodizing process as required for the bungee cap, one of the two components of the bungee assembly.²

The protester contends that the Air Force denied it the opportunity to qualify as a source for the item prior to the date of award by failing to include in the RFP a description of the required anodizing procedures.³ CM alleges that the Air Force “is

¹ The RFP provided for award to the technically acceptable offeror with the most favorable combination of past performance and price. The protester’s past performance and price were not evaluated because CM was not a qualified source.

² The process at issue here is anodizing an aluminum surface, which is performed as a means of preventing corrosion. The Air Force engineer describes the effect of anodizing as similar to rust on steel. The specific dispute between CM and the agency concerns the difference between two types of anodizing, hard anodizing and soft anodizing, which require different processing techniques and produce different results. The agency decided not to approve CM as a qualified source because it found no evidence that CM’s item had been subject to the soft anodizing process required by the agency for the item here. See Decl. of Air Force Engineer, Dec. 16, 2003, at 1-3.

³ The protester also complained in its initial protest to our Office that the contracting officer failed to check the status of its request for qualification prior to awarding to Goodrich. The contracting officer denies that this was the case, noting that she checked several times, including immediately prior to award on November 25, to see
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trying to hold manufacturers to requirements that engineers know of but failed to include in the solicitation,” and that “[h]ad this information been included in the [RFP] then CM would [have] included this procedure in the [qualification] package, [and] thus not [been] rejected by the engineer.” Protester’s Comments, Jan. 5, 2004, at 1.

An agency may limit competition for the supply of parts if doing so is necessary to ensure the safe, dependable, and effective operation of military equipment, and if nonapproved sources are given a reasonable opportunity to qualify. Arrow Gear Co., B-238936, July 12, 1990, 90-2 CPD ¶ 28 at 4. In such cases, contracting agencies are required to advise potential offerors of all the requirements they must satisfy to become qualified; afford them a prompt opportunity to demonstrate their ability to meet the qualification standards; and promptly inform potential offerors whether qualification has been attained. Federal Acquisition Regulation §§ 9.202(a)(2) and 9.202(a)(4).

Here, the agency asserts that the required process was clear from a drawing that was made available to the protester and other prospective offerors (via posting on a website). The agency further argues that even assuming that the RFP package and drawing did not adequately apprise the protester of the requirement, the protester was on notice of it because “[s]hortly after CM submitted its qualification/qualification waiver package, [the engineer] conferenced with CM and explained in detail to CM” the agency’s requirement and its importance. Supp. Decl. of Air Force Engineer, Jan. 4, 2004, at 2-3. According to the Air Force engineer, “CM responded to [his] explanation of the requirement and its importance, not by stating that it could or would comply with it, but rather by challenging its necessity and claiming CM could achieve acceptable part without using this anodize method.” Id. at 3.

The protester has neither taken issue with nor attempted to rebut either the agency’s argument that the required anodizing process was clear from the drawing or its argument that the engineer personally advised CM of the required process. With regard to the latter point, the protester indeed confirmed in its January 5 submission to our Office that the Air Force engineer had explained the required anodizing process to it and that it had responded by claiming that it could produce an acceptable part without using this method. Because the protester has neither taken issue with nor attempted to refute the agency’s position, it effectively has abandoned its argument that the Air Force denied it the opportunity to qualify as a source by failing to include in the RFP sufficiently detailed information regarding the required anodizing procedure. O. Ames Co., B-283943, Jan. 27, 2000, 2000 CPD ¶ 20 at 7. In any event, it is clear from the record that CM was aware of the agency’s requirement

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if any other sources had become qualified, but CM had not. CM does not dispute the contracting officer’s account of events.

and failed to demonstrate that its item had undergone the required anodizing process. As a result, it clearly was reasonable for the agency to conclude that CM was not a qualified source.

In its final submission to our Office, the protester requests that the Air Force furnish it with an additional opportunity to qualify as a source. To the extent that the protester is requesting that the agency continue to suspend performance of the contract awarded to Goodrich until CM has been given an additional opportunity to qualify, the Air Force is under no obligation to do so. Marc Ave. Corp., B-261968.2, Jan. 11, 1996, 96-1 CPD ¶ 79 at 3; see also RFP at 13 (“Unless determined to be in the Government’s interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.”) and at Source Qualification Requirements at 2 (“The current acquisition need not and will not be delayed in order to provide an offeror with an opportunity to meet the requirements for qualification waiver.”).

To the extent that the protester is instead requesting that the Air Force give it the opportunity to qualify as a source so that it will be able to compete for future acquisitions of the bungee assembly, the Air Force has indicated its willingness and intention to continue working with CM to qualify it as a source for the part. Contracting Officer’s Statement of Fact and Findings at 1, 3; Decl. of Air Force Engineer, Dec. 16, 2003, at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel