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Decision

Matter of: Associated Aircraft Manufacturing & Sales, Inc.

File: B-293529

Date: March 22, 2004

John J. Fausti, Esq., John J. Fausti & Associates, for the protester.
Richard Ferguson, Esq., Defense Logistics Agency, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded contract to an unapproved source is denied where awardee purchased company identified in solicitation as an approved source, and agency activity responsible for source approval sanctioned the award.

DECISION

Associated Aircraft Manufacturing & Sales, Inc. protests the award of a contract to Signal Technology Corp. under solicitation No. SP0920-03-R-X723, issued by the Defense Logistics Agency (DLA) for radio frequency detectors for use by the Department of the Navy. Associated principally asserts that the award was improper because Signal was not listed in the solicitation as an approved source.

We deny the protest.

The solicitation called for an indefinite quantity of radio frequency detectors, NSN 5895-00-122-1556, a critical application item. The solicitation listed three approved sources--Associated, BAE Systems, Inc. and ST Innowave--that were eligible for award, and provided for award on a "best value" basis. Two offerors--Associated and Signal--responded to the solicitation. Signal requested in its proposal that it be assigned the approved source status of Innowave, because it had purchased Innowave. DLA forwarded the request to the Navy's Engineering Support Activity (ESA) for approval. The ESA initially approved the request subject to Signal's product receiving first article test (FAT) approval, but subsequently agreed to waive the FAT requirement. Thereafter, the agency selected Signal for award.

Associated maintains that the award was improper because Signal was not listed in the solicitation as an approved source. This argument is without merit. An agency

may award a contract to the successor of an approved source where the successor purchases all aspects of the approved source that are required for contract performance. Magneco Inc., B-235338, Sept. 1, 1989, 89-2 CPD ¶ 207 at 7-8. DLA explains that, although Signal itself was not listed as an approved source, in purchasing Innowave Signal obtained all aspects of the company that were required for contract performance. The protester has not shown otherwise.

Associated argues that Signal lacked proper approval because, according to Associated, under the standard solicitation provision at Federal Acquisition Regulation (FAR) § 52.209-1, when a contractor acquires an approved source product of another manufacturer--essentially the situation here--and the location or ownership of the facility where the product was manufactured will change, the acquiring company must undergo source approval testing.

The protester's argument is based on a misreading of FAR § 52.209-1. The plain language of that provision requires only "reevaluation of a qualification" where the location or ownership of the manufacturing facility of an approved source changes; it does not require that the purchasing entity undergo testing or be formally re-approved, as the protester suggests. The FAR does contemplate that firms will request reevaluation of their approved status for a product where the location or ownership of the manufacturing facility has changed, and FAR § 9.207 (a)(3) addresses the situation where a firm fails to do so, providing as follows:

The contracting officer shall promptly report to the agency activity which established the qualification requirement any conditions which may merit removal or omission . . . or affect whether a source should continue to be otherwise identified as meeting the requirement. These conditions exist when--

. . . .

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product that met the qualification requirement was manufactured (see the clause at 52.209-1, Qualification Requirements).

Signal's request in its proposal that it be given Innowave's source approval status appears to have served this purpose. In response to that request, DLA reported the change in ownership to the ESA responsible for source approval, and the ESA agreed that Signal could rely upon Innowave's source status. This is all that was required by the FAR.

Associated claims that Signal had to be formally re-approved in order to be eligible for award, because Innowave has not manufactured the item since 1988, and Signal itself has not manufactured the item since it purchased Innowave in 1993. This argument is untimely. Innowave was listed in the solicitation as an approved source. Thus, if Associated believed that Innowave should not be considered approved due

to its years of inactivity, it was required to protest on this basis prior to the closing time for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2003).

The protest is denied.

Anthony H. Gamboa
General Counsel