

Protest of)
LEDER, INC.) Date: October 25, 1988
)
Solicitation No. 197101-88-B-1173) P.S. Protest No. 88-62

DECISION

Leder, Inc. protests the rejection of its bid on Solicitation No. 197101-88-B-1173 for pickoff belts as nonresponsive. The solicitation was issued by the Western Area Supply Center on June 21, 1988 with an offer due date of August 2. The solicitation noted, at Section C, that the "source control drawing lists approved sources" and that "[s]ubstitutes are not acceptable." The only approved source listed on the drawing was Siegling America. Leder was the low bidder; its bid was based on providing its own brand of belts. The contracting officer found Leder to be nonresponsive and made award to Siegling America. Leder's timely protest followed.

Leder argues that, because it had been an approved source for these belts on an earlier solicitation,^{1/} and had, in fact, received award of a contract under that solicitation, it was an approved source under the present solicitation. It states that the earlier solicitation had set a precedent that it was an approved source and that its performance on the contract had been acceptable and on schedule. Therefore, it feels that it was incorrectly rejected as nonresponsive.

The contracting officer responds that the approval of Leder's belts on Solicitation No. 197101-87-A-1514 was a one-time change based solely on tests performed by the Engineering Support Center and that a supplier does not become an approved source until an Engineering Change Order formally modifies the drawing to list the source.

^{1/}Solicitation 197101-87-A-1514 for the same type of belts at issue here contained the following language in Section C.

3. USPS Drawing No. 32.1502.000-57, Page 4 of 5, Para. 6, 6.1, Approved Sources of Supply, the following vendor is added:

(2) Leder, Inc.
652 Browns Ferry Rd.
Carmichaels, PA 15320-1076

This has never happened with Leder. Furthermore, the contracting officer states that Leder's performance under the 1987 contract has been unsatisfactory; eight rejections of Leder's belts, the latest as recent as September 21, 1988, have caused Leder to halt production. These rejections are cited as further evidence that Leder's belts are not an approved source of supply.

As a general matter, the determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. POVECO, Inc., P.S. Protest No. 85-43, October 30, 1985; American Airlines, Inc., P.S. Protest No. 84-72, December 14, 1984. There is no evidence supporting the conclusion that Leder was an approved source for the instant solicitation.^{1/} Rather, the record establishes that, after a one-time waiver to allow it to bid in 1987, Leder's products were specifically excluded from consideration in the present case. The contracting officer correctly determined Leder not to be an approved source and rejected its bid.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 3/4/93]

^{2/}We do not understand Leder to be protesting the fact that the solicitation did not list it as an approved source. As to this issue, its protest is untimely, as it was filed after bid opening. PCM 2-407.8 d. (1); Owen L. Harrison, P.S. Protest No. 87-09, February 25, 1987; see Space-Lok, Inc., Comp. Gen. Dec. B-204959.2, November 12, 1982, 82-2 CPD & 436.