



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

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B-177904

May 4, 1973

Digital Computer Controls, Incorporated
12 Industrial Road
Fairfield, New Jersey 07006

Attention: Mr. Phillip I. Rafield
Vice President - Marketing

Gentlemen:

Reference is made to your letters dated January 25 and March 22, 1973, concerning the award of a contract to Daconics, Incorporated, the prime contractor under Department of Commerce contract No. 3-35132 (RFP 2-35377), to furnish upper air dedicated computer systems. You protest any award of a subcontract to Data General Corporation under this contract.

Department of Commerce solicitation No. 2-35377 was issued April 20, 1972, with a closing date as amended of June 2, 1972. Daconics was one of four firms (of the eight that responded) considered to be in the competitive range. None of these firms proposed the use of your D-116 computers in its initial proposal. Daconics initially proposed only the use of Data General Corporation's NOVA computers in the system it intended to furnish. Negotiations were conducted with each of the four firms, and they were subsequently requested to submit their best and final offers by August 30, 1972.

In submitting their best and final offers, both Daconics and F & I Systems (one of the other four firms included in the negotiations) submitted alternate proposals utilizing your D-116 computer. Daconics' offer for its proposal utilizing the Data General NOVA computers was \$1,719,770. Its offer under the alternate proposal utilizing your D-116 computers was \$1,626,768. On November 22, 1972, Daconics' proposal based upon the use of Data General's NOVA computers was accepted and award was made.

Insofar as your protest may relate to the award of the prime contract, we note that by letter dated December 28, 1972, to the agency you protested the "mandated use of Data General's NOVA 1200 Series"

[Protest of Subcontract Award]

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in the award to Daconics, contending that your D-116 computer is technically equivalent and less expensive. The agency advised you in a letter dated January 11, 1973, that Daconics' alternate proposal based upon utilization of your computer was not acceptable because it did not include the documentation required by the solicitation to determine compliance with the specifications. If your protest be considered one against award of the prime contract, it is untimely because it was not filed in this Office within 5 days of notification of the adverse agency action and will not therefore be considered on the merits. See GAO Interim Bid Protest Procedures and Standards, 4 CFR 20.2(a); and B-176717, January 8, 1973.

Furthermore, the merit of any protest against the award of a subcontract by Daconics is not for consideration because the bid protest procedures of our Office, 4 CFR 20, supra, do not provide for the adjudication of protests by firms against subcontract awards made by prime contractors who are not acting as purchasing agents for the Government. 51 Comp. Gen. 803, 806 (1972).

Accordingly, we must decline to rule upon the merits of your protest.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States