



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

B-179147

October 31, 1973

40158

Depew and Rykhus
Attorneys at Law
Suite 302
1700 K Street, NW.
Washington, D.C. 20006

Attention: Douglas J. Rykhus, Esq.

Gentlemen:

Your letter dated August 20, 1973, and prior correspondence, protesting as counsel to the Microcom Corporation (Microcom) against the award of a contract to any other firm under invitation for bids N00123-73-B-2196, issued by the Naval Regional Procurement Office, Los Angeles, California, raises two issues: whether (1) the specifications were ambiguous; and (2) the low bid was a "buy-in."

Concerning the first issue, section 20.2 of our Interim Bid Protest Procedures and Standards provides that protests based on alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In response to an inquiry from our Office concerning whether the foregoing standard had been satisfied, your letter of August 20, 1973, stated that Microcom had protested to the procuring activity before bid opening. Based upon this representation, our Office requested a documented report on the matter from the Department of the Navy.

The Navy report, under cover letter dated September 17, 1973, contained the contracting officer's statement of the facts leading to the protest. As stated therein, the only question concerning the specifications raised by Microcom prior to bid opening related to the listed approved vendors. In response to Microcom's request that a particular firm be added to the list, the contracting officer amended the IFB. In response to telephonic inquiries to you to resolve the question whether the protest was timely filed, you agreed that the substance of the prebid-opening contracts between Microcom and Navy would not constitute a protest. Therefore, your protest before our Office on this issue is untimely and will not be considered.

[Protest Alleging Specifications Were Ambiguous]

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Regarding the second issue, Armed Services Procurement Regulation 1-311 does not specifically prohibit "buy-in" bids, rather it provides in part:

"(b) To avoid or minimize the opportunity for 'buying in' on a procurement which is likely to be succeeded by one or more 'follow-on' procurements, the Government should obtain from the contractor a binding price commitment covering as much of the entire program concerned as is practicable. Such a commitment may be secured through employment of one of the following procurement techniques:

* * * * *

"(1) priced options for additional quantities which together with the quantities being firmly contracted for, equal the anticipated total program requirements (see 1-1504)."

The contracting officer states in his report that the items involved in this procurement (telemetric sections)--

"* * * are not of such a nature that the awardee will have an unfair competitive advantage in any subsequent procurements. Indeed, the instant procurement is just such a subsequent procurement, and a change of contractor has occurred. There are priced-out option quantities to be included in the contract. These options, while priced higher than the basic units, are nevertheless priced at less than Microcom's price for the basic units."

Moreover, a price analysis conducted on the low bid concluded that the bid price, \$546,255, was reasonable, particularly in view of the Government's estimated total cost, based on prior procurements, of \$524,000. In any event, an alleged "buy-in" does not afford a basis to question the legality of an award. See 50 Comp. Gen. 50, 54 (1970) and cases cited therein.

Consequently, your protest is denied.

Sincerely yours,

Paul G. Denbling

For the

Comptroller General
of the United States