



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

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October 9, 1973

Goodyear Tire & Rubber Company
Aviation Products Division
1144 East Market Street
Akron, Ohio 44316

Attention: Mr. E. A. Davis, Jr.,
Manager
Contract Administration
Wheel & Brake Operations

Gentlemen:

Reference is made to your telefax dated January 4, 1973, and letters dated January 15, April 25, and August 24, 1973, protesting the issuance of request for proposals No. F42600-73-R-7025, by the Department of the Air Force, "to parties other than us and any resulting award if made to any party other than us" for certain wheel assembly bolts for C-123 aircraft. As explained below, we find no basis for sustaining your protest.

The solicitation was issued by the Directorate of Procurement and Production, Ogden Air Materiel Area, Hill Air Force Base, Utah, on December 5, 1972. The requirement was for an indefinite quantity contract covering a maximum of 4,956 bolts, part number GYS7N62, for C-123 aircraft with an immediate buy quantity of 2,250 bolts. The RFP was issued pursuant to the authority of 10 U.S.C. 2304(a)(10), which authorizes negotiation where "the purchase or contract is for property or services for which it is impracticable to obtain competition", and under Armed Services Procurement Regulation (ASPR) 3-210.2(xv), which provides as follows:

"(xv) when the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace;"

All previous procurements of the items were made on a sole-source basis from Goodyear Tire and Rubber Company. The subject procurement

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was coded 2C, designating the suitability of the procurement for competition for the first time in accordance with Air Force Regulation 57-6.

The cover sheet to the solicitation contained the statement that this procurement is restricted to Goodyear and other sources from qualified products list (QPL) 7838; that specifications and drawings of the requirement are furnished; and that copies of the solicitation would be furnished to additional firms who submit proof of prior approval. Under Part II, Section F, of the solicitation it is stated that the applicable specifications are as follows:

Item No. Specifications, Standards, Drawings and/or Attachments

| | |
|------|-------------------------------------|
| 0001 | GYS7N62 (See Dwg 5D4-294 RIV & BOLT |
| | 5D1-1613 REV C SPEN |
| | 5D4-294 REV E BOLT |

See Attachment "A"

Attachment "A" provides, insofar as here pertinent, as follows:

"The following Specification/Standards Etc. shall be used in lieu of the Data indicated. The superseded Data will not be furnished unless so indicated.

ENGINEERING INSTRUCTIONS:

"a. Procurement sources shall be restricted to Goodyear Tire and Rubber Co. and bolt manufacturer's specified by QPL-7838 as qualified to manufacture similar type products.

"b. New sources, that have not previously furnished the bolt to the Government, must comply with the following qualification requirements:

(1) A test sample, consisting of fifteen (15) production bolts, shall be tested in accordance with the test requirements of specification 5D1-1613. The test sample must satisfactorily meet all requirements of paragraphs three (3) and four (4) of the specification.

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"(2) A certified test report, specifying results of the tests and conformance of the bolt to all other requirements of Specification 5D1-1613, shall be furnished OAMA/AMEO, Hill AFB, Ut 84406 upon completion of the testing.

"(3) The required testing and submission of the test report must be accomplished prior to completion of production manufacture and acceptance of the bolts by the Government.

"c. Parts shall be identified by steel stamping part number and manufacturer's Federal Supply Code Manufacturer's (FSCM) per Drawing 5D4-294. Part identification must be in accordance with MIL-STD-130.

"d. Reference to Goodyear Tire and Rubber Co specified by 5D4-294 and 5D1-1613 shall be defined to mean the cognizant engineering activity. All queries or correspondence of a technical nature must be directed to OAMA/AMEO, Hill AFB, UT 84406 in lieu of Goodyear Tire and Rubber Co."

Of 14 firms solicited, only two responded with offers--Goodyear and Valley-Todeco, Incorporated. Because the low proposer, Valley-Todeco, had not previously produced this particular bolt, a preaward survey was requested from the Defense Contract Administration Services District office (DCASD), Van Nuys, California. A preaward survey recommending a complete award was returned by DCASD. Pursuant to a Determination and Findings approved March 22, 1973, award was made to Valley-Todeco on an urgency basis as authorized by ASPR 2-407.8(b)(3).

In support of your protest you contend that the solicitation is predicated on obsolete specifications; that insufficient controls are being exercised to insure procurement of equivalent parts from qualified sources; that no source other than Goodyear is qualified to manufacture the part; that there is a lack of fair and equal competition as Goodyear has qualified (at its expense) to more stringent specifications while other parties need only qualify to superseded specifications; that it is false to assume that a QPL supplier is truly qualified to manufacture the particular item here required; that the use of the Goodyear Trademark (GY) and number on the item is improper since it will carry with it the implication that Goodyear manufactured the item; and that it is obviously not in the interest of the Government to procure questionable items from uncontrolled sources.

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The central issues summarized in your August 24, 1973, letter are:

- "1. The proposed procurement is not based on fair and equal competition.

"Simply put, fair and equal competition can only be achieved by requiring any source other than Goodyear to qualify the bolt, at the source's expense, to the identical Government requirements to which it was qualified by Goodyear at Goodyear's expense.

"Such fair and equal action would have the additional important advantage of insuring that a bolt so procured would perform equal to the Goodyear qualified bolt.

- "2. The proposed procurement would require a source other than Goodyear to identify the item to be procured with Goodyear's GY Trademark Designation.

"Obviously this can only compound the injury to us contemplated by Issue 1: Not only would another source be permitted the unfair advantage of offering an unqualified part as equal to our qualified part, he would actually be required to place our Trademark (GY) on said part—thereby potentially shifting the responsibility for any servicing or failure of the part from itself to Goodyear.

"If an unqualified 'look-alike' part must be used, at least let it be identified with an entirely new part number that does not include our 'GY' designation. * * * "

In response to your contentions the Air Force advises that the cognizant engineering activity has reported that the bolt was originally qualified by you to requirements equivalent to the specifications applicable to this procurement; that the specifications referenced in the RFP have not been rendered obsolete by any changes submitted to or approved by the cognizant engineering activity; that in recognition of the critical nature of the bolt, the solicitation was restricted to sources considered qualified, based on past experience, to manufacture a bolt equivalent to that previously furnished by you; that to insure compliance a sample of 15 bolts

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will be tested to determine conformance to Goodyear Specification 5D1-1613; and that the "GY" in the part number is being used for identification purposes along with the contractor's manufacturing code pursuant to MIL-STD-130, as such part number appears on the drawing applicable to this procurement. In connection with the latter point, the Air Force notes that the parts bearing the referenced number are for Government use only and that the use of such number is not a representation that the part was manufactured by you or is of the quality of your part.

In response to a recent protest by your company involving essentially the same contentions we stated the following which is equally applicable here:

"We have consistently held that absent sufficient documented reasons, competition in all aspects of procurement is the desired goal and that continued vigilance should be exercised in an effort to maximize competition. 50 Comp. Gen. 184 (1970). Further, 10 U.S.C. 2304(g), as implemented by ASFR 3-102(c), requires competition to the maximum extent practicable. AFR 57-6, section 1-300; is to the same effect. Also, see ASFR 1-313(a), with respect to the competitive procurement of parts. We feel that in many instances the assurance of reliability and interchangeability of spare parts may be obtained through competitive procurement procedures as well as from sole-source buys from the current manufacturer of the item. Therefore, when the Air Force became aware of other qualified sources, it was incumbent upon it to solicit those firms to attain maximum competition. B-172901, B-173039, B-173037, nunra; B-166435, July 1, 1969." See 52 Comp. Gen. 778, B-177115, May 14, 1973.

Also, as pointed out in the above case,

"While it is true that the testing procedures to which Goodyear was initially subjected were more stringent than those to which subsequent contractors will be subjected, this inequality is attributable to the fact that the Goodyear tests were necessary to prove the design, composition and functional characteristics of the newly designed component, while any subsequent sources will be required to demonstrate only that their parts will meet the specifications and functional characteristics of the accepted component previously proven through more rigorous qualification testing."

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Finally, the Air Force insists that in the circumstances reported here the use of your trademark does not afford you any remedy against the Government for trademark infringement. We find no reason to disagree with the Air Force's position in the matter. In any event, the use of your trademark does not affect the validity of this procurement.

In view of the above, your protest is denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States