



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

B-178967 (1)

40163 November 5, 1973

Hy-Gain Electronics Corporation
8601 N.E. Highway 6
Lincoln, Nebraska 68507

Attention: Mr. R. M. Heinske

Gentlemen:

We refer to your telefax message dated June 21, 1973, and related correspondence, in which you protest the award of any contract under invitation for bids (IFB) DAAB05-73-B-0977, issued on May 25, 1973, by the United States Army Electronics Command, Philadelphia, Pennsylvania.

The solicitation was for a quantity of antenna elements. The administrative report submitted by the United States Army Electronics Command, Philadelphia Office, indicates that a bidder mailing list containing 45 firms was pre-solicited on May 11, 1973. Nine firms responded requesting bid sets and were sent copies of the IFB with a bid opening date of June 14, 1973. Examination of the copy of the mailing list furnished us with the administrative report reveals that your firm was not listed thereon.

A synopsis of the proposed procurement was published in the June 4, 1973, issue of the Commerce Business Daily. As a result, 13 additional bid requests were received. Solicitations were sent to these additional bidders for informational purposes, although it was realized that time constraints would possibly preclude their submitting timely responses.

A total of 3 bids were received, 2 from the original mailing list and 1 from the solicitations sent subsequent to the notice in the Commerce Business Daily. The contracting officer determined all bids to be responsive, and referred the matter of the low bidder's responsibility for pre-award review. Although the determination was apparently affirmative, award is being withheld pending our decision.

You protest on the following grounds: (1) through alleged administrative inefficiency on the part of the contracting agency,

[Protest Alleging that Agency Failed To Send Solicitations on Time]

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B-178967

you failed to receive a copy of the solicitation in sufficient time to prepare and submit a bid prior to bid opening. You state that you received a copy of the IFB, postmarked June 13, on June 18, four days after the bid opening date; (2) the notice published in Commerce Business Daily failed to specify a bid opening date. You further state that you currently hold two separate contracts for the end item of which the antenna element being procured is a component part, and that the contracting agency's failure to properly solicit you constitutes an unjust restriction of trade.

Although your name did not appear on the applicable bidder mailing list and you deny requesting a copy of the bid set, for some inexplicable reason you received a copy of the bid set, albeit, too late to submit a timely bid. With regard to the omission of your name from the list, the contracting officer reports that because of the many prospective bidders for this item he employed the rotation method of establishing the 45 firms to pre-solicit as authorized by Armed Services Procurement Regulation (ASPR) 2-205.4(b).

Armed Services Procurement Regulation 2-203.1 provides that solicitations shall be mailed or delivered "to a sufficient number of prospective bidders so as to elicit adequate competition." There is no requirement for a contracting agency to solicit every possible bidder. Indeed, such a requirement would be impossible to administer. Furthermore, as noted above, ASPR 2-205.4(b) permits rotation of bidders to be solicited. We have consistently held in similar cases that, where the method of solicitation in fact provided adequate competition and reasonable prices, the failure to solicit a particular bidder, or the failure to solicit him in time for him to submit a timely bid, does not, absent a showing of a deliberate intent to exclude that bidder, afford a sufficient basis to cancel a solicitation or question an otherwise proper award. 49 Comp. Gen. 707 (1970); B-155319, November 20, 1964; B-177962, March 28, 1973; cf. B-174619, March 27, 1972.

As pointed out above, 45 firms were pre-solicited and bid sets were sent to nine of them. Also, 3 firms of the 13 firms requesting bid sets as a result of the Commerce Business Daily publication received bid sets early enough to submit timely bids. We note further from the contracting officer's statement that unit prices of \$8.05 and \$7.00 were realized in previous procurements of the item, and the unit price of the low bidder here for the smallest quantity in the IFB was \$7.10.

B-170967

Thus, we are unable to conclude that the solicitation here failed to obtain adequate competition and reasonable prices. Furthermore, there is no evidence of any conscious or deliberate intent to exclude you from the competition.

As to the failure of the notice published in the Commerce Business Daily to specify an opening date, while this appears to constitute a technical violation of ASPR 1-1003.9(b)(8), it does not justify cancelling the solicitation since, as discussed above, adequate competition and reasonable prices appear to have been obtained. However, we are bringing this and other publishing deficiencies to the attention of the Secretary of the Army.

Accordingly, there is no basis for our Office to interfere with the proposed award and, therefore, your protest is denied.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States