



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

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December 4, 1973

Law Offices
Daniel H. Ross
Suite 1230, 5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Attention: Glada F. Fleke, Esq.

Gentlemen:

We refer to your letter of October 23, 1973, and prior correspondence, protesting on behalf of Target Corporation (Target) against the award of a contract to General Electric Company (GE) under request for proposals (RFP) No. N00126-73-R-3N0116, issued by the United States Navy Electronics Supply Office (ESO), Great Lakes, Illinois.

The cited RFP was issued on August 2, 1972, by the Navy ESO, soliciting proposals for a primary quantity of four units and three different alternate quantities ranging from 6 units to 15 units of GE No. 77D600375G2 circuit card assemblies. Since the circuit card assembly was a replacement part required for use in the AN/ESQ-14 equipment (a sonar mine detector and classifier), and inasmuch as adequate specifications or any other adequately detailed description of the assembly to assure compatibility with the equipment was not available to the Government, only GE, the one supplier previously furnishing the identical item was solicited. To advise all prospective offerors properly, and in a timely manner, of the insufficiency of available Government technical data and that no technical proposals were being solicited, the following clause was set forth in the solicitation:

"LIMITED SOLICITATION

"Because of the stringent technical requirements of this procurement but insufficiency of Government technical data pertinent thereto, proposals are being solicited only from (see below) as suppliers previously supplying the identical item to the Navy Electronics Supply Office or previously approved by competent Government technical authority for supplying the identical item. The foregoing also serves the purpose of reflecting subcontracting opportunities which may or may not be available, and synopsis of this procurement in the Commerce Business Daily is solely for this purpose.

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"GENERAL ELECTRIC
HEAVY MILITARY ELECTRONIC SYSTEMS PRODUCTS DEPT."

However, six other suppliers requested and received copies of the solicitation. Only two proposals were received, those of Target and GE. Target submitted a set of drawings in connection with its proposal which purported to describe the circuit card assembly it intended to supply in response to the solicitation. But ISO asserts that it was not in a position to determine whether or not such drawings were complete or whether they described an item identical to the required GE No. 77D600375G2. It is stated that the reason a determination could not be made as to the adequacy of such drawings was that Government data relating to the GE No. 77D600375G2 circuit card assembly was not sufficient to provide a basis for a meaningful comparison with the data submitted by Target. Therefore, award of contract No. N00126-73-C-0459 was made to GE on September 20, 1972. Such award cited the authority of 10 U.S.C. 2304(a)(10), stating that the contract was for property for which it was impractical to obtain competition, and covered the primary quantity of four units.

Your basic contentions, after several exchanges of correspondence with the Navy, appear to be that Target's proposal price was lower than that of GE, and that the Naval issuing installation was in possession of technical data or other information in one form or another from which it could have been ascertained that the product Target intended to furnish was equal to, and interchangeable with, that product specified in the RFP.

With respect to the lack of evaluation of the proposal submitted by Target, ISO stated the following in its letter of September 18, 1972:

"As stated on pages [sic] 21 of the Request for Proposal it was necessary to limit solicitation because of insufficiency of Government technical data. Unfortunately, the technical data submitted by your firm cannot be evaluated by this office. However, all of that data will be forwarded to the cognizant technical activity with a request that either your data be evaluated to determine if you can be considered a supplier for future procurements of the item or a technical data package for competitive procurement be provided for our use on future procurements."

Moreover, this limitation of solicitations was originally supported by a sole-source procurement certification for the items involved.

In our opinion, the record establishes the fact that the unsolicited proposal submitted by Target for furnishing alternate material would have been evaluated but for the fact that due either to the limited information that was available to the ESO technical personnel or to the complete lack of certain data, that Government office was unable to make a true judgment that the alternate material quoted upon by Target was equal to and interchangeable with, the material specified in the subject RFP. In this connection, our Office consistently has held that the determination as to whether a particular product offered by a bidder complies with specification requirements--in this instance whether the items upon which Target submitted quotations were equal to, or interchangeable with, the specified GE products required--is primarily a function of the department or agency charged with the administration of the contract. Such a determination must, of necessity, be based upon the availability of correct factual information to the department or agency concerned prior to award and, in the absence of a showing of bad faith or the lack of a reasonable factual basis for the determination, our Office will not object to the conclusion reached. See B-155457, February 10, 1965.

It appears from the record that the ESO position as regards this particular procurement was that a master drawing or an accurate reproduction of the master drawing, showing the exact printed wiring pattern of the circuit card assembly, would be necessary to determine the interchangeability of any item other than the GE product. Without such a drawing, it could not be guaranteed that the item offered would be made to the exact image of the original item and, therefore, there was no assurance that the Target product would function as an interchangeable part in the AN/SQQ-14 detecting set. The initial contract to GE did not require the delivery of a master drawing, and the blown-up reproduction of the microfilm copy which ESO did have was not adequate for use as a basis of comparison with the specifications submitted with your proposal.

It is your contention that such drawings were not necessary, as evidenced by the fact that Target has manufactured modules for the AN/SQQ detecting set previously and was not supplied "master drawings or an accurate reproduction." You state that Target has made its own "master" from drawings furnished and that the Government has approved the "certain data package" under the same conditions and circumstances as those that were furnished for the bid on the above referenced protests. The contracting officer's response to this contention is that items delivered under the previous awards, where master drawings were not necessary, were defective. Your response to this, is that the deficiencies were not due to the lack of master drawings, but that they were a result of errors in the manufacturing process.

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Our Office does not have the capability to ascertain whether the failure of the prior equipment to function properly was due to the lack of master drawings as the agency contends, or if such was due to faulty manufacture as you contend. Therefore, under these circumstances, we are unable to say that the agency's requirement for master drawings was improper under the circumstances as they previously existed.

However, we are aware of the fact that there will again be procurements for this item in the foreseeable future. In this regard, the Director, Purchase Division, Naval Supply Systems Command, has stated:

"* * * Again, in accordance with AEP 3-102(c) and in order to foster competitive conditions for subsequent procurements, the Contracting Officer has written the cognizant technical hardware command and requested a reproducible master drawing of the printed circuit boards on an expedited basis for future procurements. A complete review of the balance of the drawings has also been requested to assure that all other missing data is obtained if at all possible."

Additionally, our Office has been advised by ESO that for future procurements there will be a change in the solicitation to compensate for any lack of data or drawings on the part of prospective offerors. The new solicitation will include such requirements as the fabrication of workable master drawings or the supplying of such by ESO upon request; first article testing; and form, fit, and function compatibility tests. By incorporating such requirements in future procurements, competition should be stimulated to the fullest extent possible.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General
of the United States