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

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December 17, 1973

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Industrial Acoustics Company, Inc.
350 Southern Boulevard
Bronx, New York 10454

Attention: Mr. John M. Handley,
Vice President

Gentlemen:

Reference is made to your telefax dated July 27, 1973, and subsequent correspondence, protesting the award of a contract to Ekel Industries, Inc. (Ekel), under request for proposals (RFP) No. DAH07-73-R-0076, a small business set-aside, issued by the United States Army Tank-Automotive Command (USATACOM), Warren, Michigan. As explained below, your protest is denied.

The RFP called for the design, fabrication and installation of one Semi-Anechoic Noise Evaluation Chamber. The specifications for the chamber, in pertinent part, stated:

"F.1.2 The chamber walls and top cover shall be constructed of 4 inch thick panels comprised of an incombustible, mildew resistant, vermin proof, noise barrier material (minimum density 5 pounds per square foot) covered on both sides by sheet steel of 18 gauge minimum thickness coated with a fire resistant, rust inhibiting material. The measured noise reduction through the panel shall be equal to or greater than the following:

Octave Band Center Frequencies	125	250	500	1000	2000	4000	8000
Transmission Loss in dB	19	30	39	50	50	60	60

"F.1.3 The four interior walls and the interior of the chamber top cover shall be completely lined with anechoic wedges. These wedges shall be constructed of fiberglass of the proper density and flow resistance and

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shall be covered with galvanized hardware cloth. Alternate wedge construction will be accepted. The wedges shall have a low frequency cut off of 150 Hertz. Above this frequency they shall have a 0.99 coefficient of absorption or the ratio of reflected sound pressure to incident sound pressure shall not exceed 10%."

The reference to "5 pounds per square foot" in the above quote was later corrected during discussions with the offerors to "5 pounds per cubic foot."

Proposals received in response to the RFP were to be evaluated in accordance with the following provisions:

"D.3 The evaluation factors listed below are in descending order of importance. Technical Approach & Background weights consist of more than 75% of the total weights to be allocated:

"D.3.1 Technical Approach:

D.3.1.1 Feasibility, adequacy and practicality of approach.

D.3.1.2 Responsiveness to terms, conditions and time limits.

D.3.1.3 Grasp of problem

D.3.1.4 Completeness and thoroughness

"D.3.2 Background:

D.3.2.1 Experience in similar programs

D.3.2.2 Record of past performance

D.3.2.3 Qualification of personnel

D.3.2.4 Availability of facilities and equipment.

"D.4 Cost Evaluation

"D.5 Evaluation of the proposals will be on the basis of the material presented and substantiated in the proposal and not on what may be implied. In the event the evaluated proposals are essentially equal, overall cost to the Government will be the controlling factor."

The RFP was issued on April 11, 1973, to 12 potential offerors. On the closing date for receipt of proposals, May 11, 1973, proposals were received from Eckel and Industrial Acoustics Company, Inc. (IAC). Technical evaluation of the proposals resulted in Eckel receiving 322 points for 89 percent, while IAC received 284 points for 78 percent out of a possible 360 points. On June 1, 1973, you were advised that the RFP required 5 pounds minimum density of material in the panel wall with 16 gauge steel sheet on the inner and outer walls, while you proposed a 16 gauge steel sheet outer wall with a 22 gauge steel sheet inner wall and 4 pounds minimum density of material in the panel wall. Also, you were advised that the RFP called for a solid sheet steel inner wall rather than the perforated wall offered by IAC.

On June 6, 1973, you submitted a letter to clarify your proposal. However, you restated the specifications proposed in your original offer and provided an explanation as to the sufficiency of the chamber initially proposed. Therefore, on June 13, 1973, USATACOM notified you that the same deficiencies noted before still existed in your proposal. Accordingly, on June 15, 1973, you further clarified your proposal. At that time, you offered your "Regular" Noise-Lock model rather than the "Regular" Reichle model you had previously offered. Your proposal stated in pertinent part:

"5.0 CHAMBER CONSTRUCTION

- "a. Walls and Ceiling. The Semi-Anechoic Chamber walls and ceiling will consist of 4" thick Noise-Lock panels having a rigidized 16-gauge cold rolled steel outer surface and a 22-gauge steel inner surface perforated with 3/32" diameter holes on 3/16" staggered centers. Panels will be reinforced around all edges and internally with 16-gauge cold rolled steel channels to form a rugged metal frame.

Inner voids of the panels except for the 1" thick rigidizing membrane which is adhered to the solid steel sheet will be filled with an incombustible fibrous insulation. The insulation will be semi-rigid fibrous batts conforming to the requirements of Federal Specification MIL-I-563 and will have a density of not less than 4 pounds per cubic foot. This insulation material serves the dual function of providing acoustical performance characteristics to the panel while simultaneously acts as part of the total wedge length. This in turn, provides a greater working area inside the chamber. The average weight of wall and ceiling panels will be 10.5 pounds per square foot. Construction details and acoustical ratings for Noise-Lock panels are shown on IAC Data Sheet MS-1.1 which forms part of this proposal.

"Alternatively, IAC will provide a 22-gauge solid steel face in lieu of the 22-gauge perforated facing and a 3" longer wedge at no additional cost if this construction is preferred."

You also set out in this proposal values representing the panel sound absorption coefficients, room sound absorption coefficients with wedges, and the transmission loss through the panels. You stated that the values for panel sound absorption coefficients did not apply if solid steel was selected in lieu of perforated steel.

On June 20, 1973, both parties were informed that discussions had been concluded and "best and final offers" must be submitted by June 25, 1973. You furnished no further information.

The Technical Evaluation Committee determined that your last clarification still did not meet the IFP's technical requirements and there was no change in the technical evaluation scoring. The Committee determined that the proposed perforated panel was unsuitable because the high temperature environment with fuels and lubricants present would soon impregnate the panel fill making it a safety hazard and would require replacement at an early date. The Committee found that

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although the wedges in the chamber are easily replaceable when they become unsafe, the replacement of the panels would require major modifications of the chamber. The Committee further determined that an 18 gauge steel inner wall was necessary in order to produce a durable panel. Also, the Committee found that you still did not meet the 5 pound minimum density requirement, which was considered critical for success in the planned application of the chamber by USAMCOM. The Committee finally found that although the chamber with the perforated inner wall met the transmission loss specifications, these values did not apply if a solid steel inner wall was utilized. Accordingly, award was made to Eckel on July 9, 1973.

Your basic allegation is that you have fully complied with the RFP's technical requirements and, therefore, should receive the award since you were the low offeror and your proposal was essentially equal to if not better than Eckel's proposal.

You state that you discussed the matter of the 16 gauge and 22 gauge steel walls vis-a-vis the 18 gauge steel walls required by the RFP with the USAMCOM technical representative for the project. You contend that in criticizing your initial proposal on the basis that you were offering your standard Reichhold panel, he suggested that you offer your higher performance Noise-Lock panel, which would be entirely acceptable. However, the USAMCOM technical representative denies having stated that your Noise-Lock panels were entirely acceptable.

You also state that you were requested to provide the best panel design in order to meet the performance specifications, even if it should not be in strict accordance with the physical specifications. You state that you selected the 16 gauge/22 gauge configuration because it is well known by acoustical engineers that uniform mass distribution in panels, such as an 18 gauge inner sheet and an 18 gauge outer sheet, is definitely inferior to a mass ratio distribution of 1/2 to 1 for approximately equal total mass, such as you offered. Whether you are correct in this respect does not appear to be relevant as your proposal was not determined unacceptable because the walls were of different gauges but because the inner wall did not meet the 18 gauge requirement. Furthermore, the record does not support the assertion that you were told that you could ignore the RFP's physical specifications. In fact, the RFP's evaluation

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criteria emphasized the importance of conforming with the specifications and the record indicates that you were so told several times.

You also allege that the internal panel fill density of the offered Noise-Lock panel meets the 5 pounds per cubic foot density requirement. You state that the Noise-Lock panel internally consists of one-inch sheetrock and three inches of 4 pound per cubic foot density fiberglass, which gives it a total internal panel density of 5 pounds per cubic foot. However, you did not so describe your Noise-Lock panel in your June 15th proposal. Section D.2.1 of the RFP states:

"D.2.1 Technical Approach:

The offeror should completely and thoroughly set forth all information necessary to demonstrate his understanding of the work scope for the design and fabrication, and indicate his ability to meet all required terms, conditions and time limits."

Since you did not set forth sufficient information describing the panel fill density, it cannot be said that USMACH was wrong in finding your proposal deficient with regard to the density requirement.

You further state that you submitted actual test data demonstrating that the chamber you offered had superior acoustics to the chamber specified in the RFP. You also state that the only performance data, which you qualified as applying only if a solid sheet steel inner wall was utilized, were the values applicable to the panel absorption coefficients. You state that since panel absorption coefficients were not requested in the RFP, your qualification of those values cannot be used as a technical reason for not awarding IAC this contract.

The Chairman of the Technical Evaluation Committee in his reply to your protest concurs with your statement that the RFP did not call for panel absorption coefficients. However, he states that you also qualified your panel transmission loss values by virtue of the footnote in IAC Bulletin No. 6.0502.1, IAC-1.1, Moduline Panel Data Sheet, which you incorporated in your last proposal, and which states that such values apply only to "regular" or perforated panels.

Since you set out transmission loss values in paragraph 6.0c of your June 15th proposal, it appears that they would take precedence over the different values in the Bulletin and the footnote in that Bulletin would not qualify those values. Therefore, we do not agree with the Chairman's determination that you specifically qualified your transmission loss values.

Nevertheless, we do not feel that your June 15th proposal is altogether clear with regard to the transmission loss values. It is not apparent from your proposal that you have supported your alternative of a 22 gauge solid steel sheet inner wall with actual test data regarding transmission loss such as you claim in your protest. Inasmuch as the whole tenor of your proposal, other than your one sentence alternative offer, is based upon the presumption that perforated panels would be utilized, we think the evaluators reasonably could assume that the transmission loss values in your June 15th proposal applied only for a chamber with a perforated steel inner wall. Further, in paragraph 5.0c of your last proposal you stated that acoustical ratings for the Noise-Loek panels would be found on the IAC Data Sheet. In light of the footnote on the Data Sheet qualifying the transmission loss values listed on that sheet to perforated panels, it appears that different values probably apply if solid panels were used. Finally, you did not comply with Section F.1.13 of the RFP which stated:

"F.1.13 All technical proposals should contain documented evidence indicating the transmission loss, absorption coefficient and insertion loss of the proposed construction components."

You also contend that since you offered solid steel in lieu of perforated steel, USAMCOM's objections to the perforated steel inner wall you offered, based upon possible oil contamination, were not a sufficient reason for not awarding IAC this contract. We note that the RFP's specifications did not preclude the offering of a chamber with a perforated steel wall. However, USAMCOM's objections were made clear to you after your initial proposal was evaluated. Therefore, it cannot be said that you were prejudiced by any deficiency in the specification. As stated above, moreover, your alternative proposal of a solid steel inner wall was inadequate.

You also contend that the evaluation of your proposal was conducted by individuals without sufficient technical background.

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USATACOM states that its Technical Evaluation Committee is well qualified to evaluate any proposal pertaining to the design and construction of an anechoic chamber. It supports this statement with a citation of the various qualifications of the Committee and its members. Therefore, we see no basis to question the Committee's technical expertise.

In your letter dated October 5, 1973, you say that you have stated many times that you offered your "hard" panel, which has 16 gauge steel for both the inner and outer walls. However, the record does not show that you ever made such an offer prior to award.

It consistently has been held by this Office that the drafting of specifications to meet the Government's minimum needs, as well as the determination of whether items offered meet the specifications, is properly the function of the procuring agency, absent arbitrary action. 49 Comp. Gen. 195 (1969); 52 Comp. Gen. 393 (1972). In the present case, we do not feel that USATACOM acted in an arbitrary manner in rejecting your proposal. In this connection, we find that the agency reasonably determined that a perforated inner wall would not be suitable for safety reasons; that an inner wall of less than 16 gauge steel would not be sufficiently durable; that a panel fill density of less than 5 pounds per cubic foot would not be sufficient to meet the agency's minimum needs; and that it is not clear that your proposed alternative chamber with the solid steel inner wall would meet the transmission loss specifications. Moreover, the RFP's evaluation criteria clearly emphasized the importance of conforming to the RFP's specifications. Accordingly, we do not find that the agency acted in an arbitrary manner in rejecting your proposal in favor of Eckel's proposal, which met the RFP's requirements.

Finally, we find no evidence to support your charge that the furnishing of the administrative report was deliberately delayed to allow completion of the contract before resolution of the protest.

In view of the foregoing, your protest is denied.

Sincerely yours,

Paul G. Debbing

Comptroller General
of the United States

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