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WASHINGTON, D.C. 20548

RELEASED

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The Honorable G. William Whitehurst
House of Representatives

Dear Mr. Whitehurst:

Your letters of June 26 and August 2, 1972, requested that we examine the incidence of bid cancellation for replacement equipment by the Defense General Supply Center, Richmond, Virginia; the experience of TYCO, Inc., of Norfolk, Virginia, compared with the general pattern; and a complaint by Mr. Norvel P. Tyler, TYCO's president, about unreasonable discrimination by the Center.

After discussing the matter with your staff, we decided to concentrate on two specific areas: whether the Center (1) improperly canceled solicitations when TYCO was the low bidder and (2) improperly denied TYCO the opportunity to bid on the Center's solicitations.

We based our examination principally on a list of 25 solicitations attached to Mr. Tyler's letter to you, dated July 28, 1972. The list included seven canceled solicitations. Mr. Tyler contended that opportunity to bid was denied in three of the seven and in two others. In 16 other cases no problems were indicated.

TYCO has offered alternate parts in response to Center solicitations. When such parts are satisfactory, the competitive base available to the Center is broadened and lower prices should result. In some instances the Center disqualified TYCO's alternate parts because TYCO did not provide technical data required by the Standard Products Clause. Without complete data, as required by the clause, the suitability of the proposed alternate parts cannot be evaluated.

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The Center's cancellation rate of solicitations applicable to TYCO's bids was greater than the rate shown by our sample of the Center's total cancellations. Of the seven cancellations

- two had to be canceled because of the Center's faulty requirement determination procedures,
- two were canceled after the Center located suppliers which offered lower prices,
- one was canceled when the Center found substitute parts already in stock,
- one was canceled because parts generated from cannibalization became available after solicitation, and
- one was canceled after additional technical data became available to solicit under formal advertising procedures.

The above cancellations appear to have been proper under the circumstances, and, had the Center not canceled them, the Government would have incurred unnecessary costs.

The Center had initially solicited TYCO in one case for which TYCO contended opportunities to bid were denied. In another case where TYCO contended it was not solicited on subsequent buys of an item, there were no subsequent buys of that item. Although TYCO had not been initially solicited in a third case because it had been terminated for default on a prior purchase, the Center furnished bid sets to TYCO when it requested them. TYCO was not solicited in a fourth case because it had not qualified an alternate part offered on a previous buy. The Center did not solicit the company in a fifth case involving a previous buy of an item because TYCO was not known to be a potential source of supply.

We reviewed records and held discussions with Center officials. Their comments have been recognized in this report, but they did not have an opportunity to provide written comments. We also held discussions with Mr. Tyler on his statements and our findings. Details of our review are discussed in the enclosure.

B-176710

We do not plan to distribute this report further at this time. We believe, however, that copies should be provided to the Director, Defense Supply Agency, (DSA) for information and corrective action necessary to improve the Agency's requirement determination procedures.

This report contains information that the contractor may consider confidential business data, the disclosure of which may violate 18 U.S.C. 1905.

If we can be of further assistance, please let us know.

Sincerely yours,


Comptroller General
of the United States

Enclosure

DATA ON STATEMENTS BY TYCO, INC.,
OF IMPROPER CANCELLATION OF SOLICITATIONS
AND DENIAL OF OPPORTUNITIES TO BID

CANCELLATIONS INVOLVING TYCO
COMPARED TO THE CENTER'S NORMAL
SOLICITATION-CANCELLATION EXPERIENCE

The Center does not maintain records to show its solicitation-cancellation rate. Therefore, to compute the rate of cancellations, we scanned 1,500 of approximately 9,500 abstract-of-bid files for fiscal year 1972 and found that about 18 percent had been canceled.

We were unable to determine from Center records the number of times TYCO had submitted bids during fiscal year 1972. However, TYCO advised us that the list of 25 solicitations constituted all its bids for the period covered. Of these, seven, or 28 percent, had been canceled at the time of our review. TYCO had submitted the apparent low bid or proposal on 5 of the 25 solicitations, and the Center canceled each of them.

Many of the more than 200,000 items the Center manages are not described by Government-owned drawings or functional specifications because they are not used in large quantities or because they are replacement parts for other end-items. The Center identifies these as type 2 items and describes them for procurement purposes by a specific manufacturer or vendor part number as well as by the assigned Federal stock number (FSN). The Center usually purchases type 2 items after distributing requests for proposals to parties known or believed to be able to supply the desired items and to others who have requested opportunities to make proposals. To broaden the procurement base, manufacturers and vendors other than known sole sources are encouraged to submit proposals for alternative items and to demonstrate that their offerings will satisfy the requirements. These types of items constituted 22 of the 25 solicitations on TYCO's list.

TYCO has had difficulty in competing for the Center's business because it has frequently attempted to become a secondary source for items which the Center has believed to have only one source. To compete for such business, suppliers

are required to furnish product evaluation data, which is difficult, and perhaps in some cases impossible, to furnish.

One of the Center's problems inherent in attempting to qualify substitute items for the type 2 parts is the lack of data to qualify or disqualify a prospective competing item. Occasionally the Center does not have basic information about the item it is trying to buy. To illustrate, 1 item on TYCO's list involved a replacement air-conditioner fan motor described only by the manufacturer's part number. From the information available at the Center, including the Federal stock catalog and data in the Center's technical operation group, we were unable to determine such elementary functional characteristics as the motor's horsepower, power phase, weight, or number of revolutions per minute.

Our review of comparatively few solicitations was not adequate to conclude whether the Center could, or should, devote more attention or resources to technically evaluating alternate items when the purchases are relatively small. However, we plan to consider this matter in our subsequent reviews at the Center.

Following are detailed discussions of the individual cancellation transactions identified by TYCO.

Solicitation No. DSA-400-72-R-3015

This solicitation for 82 expansion valves for refrigeration units cited FSN 4130-955-0127, which was further identified as Task Corporation part number X02076. The Center solicited 39 potential suppliers. TYCO was the only company to respond by the opening date of November 24, 1971, and offered an alternative item, TYCO part 2500-445B, at \$30.40 each. The Task Corporation tendered a late proposal, offering to supply the items at \$46.51 each.

On December 6, 1971, TYCO provided the Center with drawings of its part and a drawing with markings indicating a Task Corporation drawing of a part number very similar to the vendor's part number cited in the solicitation.

The Center stated in its January 5, 1972, letter to TYCO that insufficient data was provided for dimensions and performance characteristics of the TYCO part. TYCO, in its

January 12, 1972, response, claimed that the drawings adequately described the product and requested that its data package be forwarded to the Navy's Engineering Support Activity for evaluation. The Center did not send the data to the Support Activity for evaluation because the drawings did not show dimensions and performance characteristics.

An interoffice memorandum dated March 7, 1972, shows that Controls Company of America was the part manufacturer. On March 17, 1972, the Center requested TYCO to extend its offer 30 days so the Center could evaluate its part. TYCO granted the extension on March 20, 1972. TYCO also gave two unsolicited 30-day extensions, dated April 19 and May 17, 1972, to its proposal.

On April 20 and May 10, 1972, the Center awarded purchase orders, for 31 and 82 valves respectively, to the Controls Company of America at a unit price of \$22.95. On May 17, 1972, the Center notified TYCO that solicitation DSA-400-72-R-3015 had been canceled and that the requirement had been satisfied by purchase at a unit price of \$22.95. On June 5, 1972, the Center made the final purchase of two valves at \$23.45 each from the Controls Company of America. The Center had sufficient justification to purchase at lower prices and to cancel this solicitation.

Solicitation No. DSA-400-72-R-3011

This solicitation, dated November 3, 1971, for 30 refrigerator motor flywheel adapters, was submitted to 34 prospective suppliers. Two offers were received, with TYCO offering an alternate part and proposing the lower price.

On December 20, 1971, the user notified the Center that the refrigerator motor on which the adapter had been used was being replaced with a different motor and that about 400 adapters would be available from the old motors. In view of the available no-cost source, DSA authorized cancellation of the solicitation on March 2, 1972, and notified TYCO on March 15, 1972.

Canceling the solicitation was appropriate after it was determined that demands for the requested items would decrease and that assets would be made available through cannibalization of old motors. There have been no solicitations for these adapters since November 1971.

Solicitation No. DSA-400-72-R-3955

This solicitation for 400 dehydrator desiccants was issued to 10 potential suppliers on December 9, 1971, specifying a January 3, 1972, closing date. The item required was described in the solicitation document as having a Task Corporation part number, and suppliers offering alternate parts were advised that they should present for evaluation technical data on their alternate parts and on Task's part.

TYCO offered to supply items identified by a TYCO part number at \$10.50 each, and the only other offeror, Task, bid \$24.84 each. Correspondence and technical evaluation reports which followed indicated that, because adequate data was not supplied, the Center was experiencing difficulty in qualifying the TYCO part. However, this did not appear to be a significant consideration leading to the cancellation.

The Center canceled the solicitation on February 22, 1972, after it found on February 13, 1972, that the items to be ordered were no longer required. While the Center said the action occurred because the requirement for the items no longer existed, the record shows that the demand data upon which the solicitation was based was in error and that the requirement had never existed. Therefore the cancellation was appropriate. There have been no purchases of this item since November 1971.

Solicitation No. DSA-400-72-R-4530

This solicitation for 34 motors was initially sent to 8 suppliers, including 6 Westinghouse addresses. TYCO and three other suppliers were subsequently sent bidding documents upon request. The opening date was February 3, 1972. TYCO was the only offeror, but it offered an alternate motor at a unit price of \$72.

TYCO's proposal to provide an alternative part resulted in product qualification questions, and the Center did not qualify TYCO's part. On February 29, 1972, the Center began telephone contacts to satisfy the requirement by purchases from other vendors. Subsequently, another Westinghouse office proposed a unit price of \$48.10. On May 2, 1972, the Center notified TYCO that the solicitation had been canceled because its price was unreasonable.

The Center was justified in canceling the solicitation because a qualified supplier who offered a lower price was identified while the Center was evaluating TYCO's offering.

Solicitation No. DSA-400-72-R-4676

Under this solicitation for 18 electric motors described as having a Thermo King Corporation part number, price quotations were solicited from 6 suppliers. Proposals were opened on February 3, 1972, and four proposals, of which the lowest price offered was \$151.80 each, were received. TYCO was next lowest with a proposal of \$216 each.

Center records show that the technical evaluations of the low offeror's and TYCO's proposals were not completed until April 28, 1972. The evaluation disclosed that both failed to meet specifications because the drawings submitted did not depict required tropicalizing and fungus-proofing.

However, TYCO and the low offeror were not notified that their offers were unacceptable. On May 5, 1972, the solicitation was canceled because sufficient technical data and drawings had become available to permit competitive procurement by formal advertising. TYCO was notified of the cancellation on May 25, 1972. Because formal advertising procedures were permitted, it was appropriate to cancel the solicitation.

An invitation for bid DSA-400-72-B-8350 for the required 18 motors and an additional 20 was issued on May 24, 1972, specifying a bid opening date of June 23, 1972, which was extended to July 21, 1972. The solicitation was sent to 37 prospective bidders; only 2 responded, TYCO and Thermo King Corporation. Thermo King had provided the parts previously acquired, and its drawings were used to describe the required motors.

The Center decided that both bids were submitted too late for consideration. In the meantime, Thermo King protested to us that the Center improperly used its drawings. The protest was denied by decision B-176428 on November 10, 1972. We were advised that the solicitation was canceled in January 1973 because decreasing demands and receipt of customer excess had eliminated the requirement.

Solicitation No. DSA-400-72-B-6107

On March 3, 1972, solicitations for 55 compressor motors were issued to 14 prospective suppliers. Bid opening date was March 23, 1972. TYCO's price of \$99.95 each for the motors was the lowest of five bids received.

After the bid opening, a review of requirements disclosed that demand for the item sought had diminished and it was no longer needed. DSA Headquarters approved cancellation of this solicitation on April 28, 1972. TYCO was notified of the cancellation on May 4, 1972. The Center has not purchased the motors since the cancellation.

The cancellation action was appropriate. However, stock information available to the Center on February 13, 1972, about 2 weeks before the solicitation was issued, showed that adequate assets to meet demands were on hand or due in and therefore the solicitation was unnecessary. To illustrate, the average monthly demand for the item in February 1972 was 9.8 units; 127 units were on hand and an additional 55 units were due in from a user. This indicated an 18-month supply. During March 1972 the monthly demand declined to 3.3 units.

Solicitation No. DSA-400-72-R-7441

This solicitation for 26 control motors, FSN 6105-053-8466, was made to 10 potential suppliers, with an opening date of May 10, 1972. The motors were further identified by a Singer General Precision, Inc., part number. TYCO offered the fourth lowest price, \$179 a unit, and the low offeror proposed \$121.75 each. Both TYCO and the low offeror proposed to supply parts other than the one described in the solicitation.

In evaluating the lowest price proposed and that of TYCO, the Center found that a suitable substitute with a different FSN was in stock. The solicitation was canceled on July 17, 1972, and the offerors were notified by telegram on July 20, 1972.

The cancellation was appropriate since the item solicited was not needed to satisfy the requirement because a substitute was in stock. However, we could not determine whether the data on the substitute FSN could have been developed earlier

to avoid the solicitation. The Center has initiated action to delete the FSN on the solicitation from the supply system. This item has not been purchased since the solicitation was canceled.

DENIAL OF OPPORTUNITIES TO BID

TYCO's list shows 5 instances in which TYCO claims it was denied opportunities to submit bids or proposals to supply the required items. Three of the denials were reported to have occurred after the initial requests for proposals were canceled and resolicitations made.

Solicitation No. DSA-400-72-R-4530

This solicitation for 34 fan motors is discussed on page 4. TYCO contends that it was not given an opportunity to bid on the subsequent buy of this item. The Center's records show that DSA-400-72-R-4530 was canceled on May 2, 1972; that the Center issued Request for Quotations No. 6105-127, which included the same 34 motors; and that TYCO was solicited and submitted a quotation dated May 10, 1972.

Solicitation No. DSA-400-72-R-7441

This solicitation was canceled in July 1972 when the Center discovered it had a suitable replacement in stock as discussed on page 6. TYCO contends it was denied the opportunity to bid on subsequent buys. However, there have been no purchases since the July 1972 cancellation.

Solicitation No. DSA-400-72-R-3044

TYCO contends it was denied the bid sets under this solicitation for 130 compressor motors. Although TYCO was not among those initially sent requests for proposals, at TYCO's request it was provided with documents for responding to this solicitation. Center officials advised us that TYCO was not initially solicited because the solicitation was a repurchase against a default termination of a prior TYCO contract.

Solicitation No. DSA-400-72-R-3015

This solicitation relates to the proposed procurement of 82 expansion valves, as discussed on page 2. TYCO contends

that it was not given an opportunity to bid on the subsequent buy of this item. Although TYCO was initially solicited, it was not solicited for small purchase quantities acquired in subsequent purchases because the Center had not qualified the alternative part offered.

Solicitation No. DSA-400-72-R-9536

TYCO contends it was denied the opportunity to bid on all previous buys of the item on this solicitation for 23 alternating-current motors. The Center's records show that only one purchase was made before this solicitation in June 1972. Two motors were purchased from the only known supplier under small purchases procedures. TYCO was not solicited because it was not known to be a potential source of supply.

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We discussed the five transactions with TYCO's president, who advised us that he had not intended, by using the expression "denied the opportunity to bid," to convey the contention that his bids were not accepted by the Center. He advised us that as a matter of routine, the Center had not initially solicited his bids and that, to obtain the bidding documents, he had to specifically request them. It appears that the Center had plausible reasons when it did not initially solicit TYCO in the above cases.