



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

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B-176609

May 8, 1973

Gerber Scientific Instrument
Company
83 Gerber Road
South Windsor, Connecticut 06074

DLFO 4341

Attention: Mr. Robert R. Lopez
Manager, Contracts Department

Gentlemen:

Further reference is made to your protest against the issuance of delivery order No. DAAA25-73-F0046 on July 21, 1972, to Actron Industries, Incorporated (Actron), by the United States Army, Frankford Arsenal, Philadelphia, Pennsylvania.

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The procuring activity determined that in order to facilitate its mission it was necessary to purchase a "3-D Inspection System" providing numerical control (NC) lathe programming capability, as well as 3-D plotting, tape verification, programming for NC inspection and tool design assistance, and programming 3 axis machining centers. Due to limited funds the system was to be acquired piece-meal, beginning with the purchase of an automatic drafting system which could be updated to provide support for the procuring activity's inspection equipment and NC lathe program. It is reported that Frankford Arsenal could not justify the purchase of an automatic drafting machine without eventually obtaining the NC lathe programming capability. Engineering personnel familiar with the above requirements reviewed Gerber Scientific Instrument Company (Gerber) and Actron systems which are available to the Government pursuant to Federal Supply Schedule (FSS) contracts listed under FSC Group 74, Part VI, Section B, FSC class 7440.

After evaluating the Actron and Gerber equipment, the Frankford Arsenal personnel determined that only Actron could provide the basic building block for the "3-D Inspection System." An Actron memory unit, Model 501, was also approved for purchase. A delivery order was issued on July 21, 1972, against Actron's applicable FSS contract for the above-noted equipment which was installed January 3, 1973.

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You contend that Gerber's equipment was not given adequate consideration since Gerber was not allowed to demonstrate its equipment and, thus, Frankford Arsenal personnel did not obtain sufficient data to permit an intelligent evaluation. In this regard, you believe that misrepresentations were made to the contracting officer as to the availability of equipment from sources other than Actron, the description of the equipment to be acquired, and the true cost of equipment from alternate sources. It is your belief that a fair evaluation of Gerber's equipment would have resulted in the determination by Frankford Arsenal personnel that Gerber's equipment met the needs, including the software requirement, at a lower cost than Actron's equipment and, therefore, a contract should have been awarded to Gerber. You cite Federal Procurement Regulations 1-1.307-2 as requiring a purchase description to clearly and accurately describe the technical or performance requirements of the item to be purchased. In this regard, you contend that the term "3-D Inspection System" is a misnomer since the item actually purchased is an automatic drafting table. You also contend that either the Arsenal's needs had not been thoroughly evaluated or Actron's representations were accepted without checking since the original purchase request was for an automatic drafting table estimated to cost \$114,000, but that Frankford Arsenal purchased an automatic drafting system for \$190,000, which is capable of providing NC programming. Furthermore, you note that only three days after an attempt was made to justify the \$190,000 purchase, the memory unit was added without justification. You believe that this evidences Frankford Arsenal's lack of knowledge about its own requirements.

Further, you contend that there was a violation of the applicable procurement regulations due to the lack of advertised competition. You contend that the equipment was purchased under a General Services Administration (GSA) contract without competition, whereas Federal Procurement Regulations 1-1.302-1 and Federal Property Management Regulations (FPMR) 101-32.407, require full and complete competition in obtaining automatic data processing equipment (ADPE), even though the Government has previously entered into a FSS contract for the required items. Furthermore, you note that the Armed Services Procurement Regulation (ASPR) and the Federal Procurement Regulations (FPR) require a procuring activity to solicit competitive prices from qualified sources in order to assure free and full competition. Based on the above, you request that the award to Actron be declared invalid.

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In response to the above contentions, it is reported that sufficient data was obtained by Frankford Arsenal engineering personnel to enable them to perform an adequate evaluation of Gerber's equipment. It is pointed out that Mr. West of Gerber made a presentation of the capability of the Gerber automatic drafting machine at Frankford Arsenal on February 29, 1971. At this presentation the requirement for obtaining NC programming in support of NC inspection, the NC machining Center, and NC lathes was discussed. It is reported that there was no positive response from Mr. West concerning these requirements. Therefore, it was concluded by Frankford Arsenal personnel that Gerber did not want to get involved in the special applications which Frankford Arsenal personnel had in mind but wanted to sell its drafting machine without NC lathe programming capability. The procuring activity personnel also held discussions with personnel at the Watervliet Arsenal concerning the use of Gerber's equipment located there. The discussions disclosed the lack of software and programming support in order to fully utilize the Gerber equipment for NC programming. Similar conclusions resulted from discussions with a commercial user of Gerber equipment. Also, information was obtained from the Gerber catalogue which showed that the Gerber system produced a paper tape whereas magnetic tapes are required. Based on this information, it was concluded that Gerber's equipment did not produce the required magnetic NC tapes and that Gerber lacked the required software to complete the "3-D Inspection System." It is reported, based upon experience at the Watervliet Arsenal, that the development of the software is costly and time-consuming.

Based upon the above, a purchase request for an Actron Model 504 was sent to the contracting officer. The Model 504 has the capability of immediately being equipped to provide NC programming. After receiving the purchase request, the contracting officer inquired as to other available sources of the equipment. In reply to this inquiry, a memorandum dated July 12, 1972, signed by the Chief, Manufacturing Engineering Division, submitted to the Industrial Readiness Study Office, stated in part as follows:

We are aware of one other company that makes a machine similar to the Actron type, "The Gerber Co." The Gerber machine cannot meet our requirement because it does not provide software to use it as an NC programmer and for other uses in support of manufacturing. The cost to develop this software would be prohibitive. On the other hand, I have a number of pieces of correspondence from the Actron Co. that provides me assurance

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that their equipment will in fact in large measure meet our requirements of Holograph Inspection and NC programming.

The memorandum also included a cost comparison of the Basic 8-K System produced by Actron and Gerber and concluded that the total cost on a 1-year basis for systems having identical tape punches was \$186,200 for Actron and \$196,316 for Gerber. However, a system which included the necessary software and employed a carbide tip for punching mylar and laminated tapes for NC requirements was available from Actron for \$190,000 and was "not available in [the] catalogue" from Gerber. Furthermore, the Army advises that even if the correct price for the Gerber equipment is \$189,549, as you contend, comparable Actron hardware (without the carbide tip) plus freight is \$2,254 less. Also, it is noted that whereas you state a comparable tip is available from Gerber, no price is quoted and the Actron tip costs \$3,800. Moreover, you state that "much" of the software is standard with the Gerber equipment, but no price is quoted for the other necessary software.

It is reported that the purchase description ("3-D Inspection System"), accurately describes the overall system that was initially intended to provide the "building block" for the total capability to be ultimately added. Consequently, Frankford Arsenal takes the position that the results of the technical evaluation, the cost of the equipment, and the purchase description were not misstated to the contracting officer.

On July 14, 1972, the Chief, Manufacturing Engineering Division, issued a memorandum noting that action had been taken to purchase an Actron automatic drafting system (Model 504) for \$114,000, but that it was to the advantage of the Government to purchase an automatic drafting machine capable of immediately providing NC programming support. The system proposed was the Actron Model 512, noted above, at a cost of \$190,000. On July 17, 1972, the Actron Model 512 was approved in lieu of Model 504. An Actron memory unit was also approved for purchase at an additional cost of \$7,125, to take full advantage of the software included in the system. It is reported that the decision to go from the "stripped-down" model to total NC programming, was precipitated by a reduction in work force, the scheduled delivery of numerical controlled lathes in November 1972, and the fact that at that time the Arsenal was already experiencing difficulty in utilizing fully the currently available NC equipment. Because of these factors, funding was re-programmed into the numerical control programming requirements.

As authority for the noncompetitive procurement of the Actron system the Army cites ASPR 5-103, which states in part that the contracting officer "shall not solicit bids, proposals, quotations or otherwise test the market for comparison with the Schedule price", and ASPR 1-1003.1(c)(v), which it says does not require an advertised solicitation where the order is placed under an existing FSS contract. The meaning of the latter provision is incorrectly stated, since it refers only to one of the circumstances where a procurement need not be synopsisized in the Commerce Business Daily. With regard to ASPR 5-103, it covers Federal Supply Schedules mandatory for use by one or more civilian agencies but not mandatory on the Department of Defense.

In this connection, it appears from the record that the procuring activity concluded that the system in question was not automatic data processing equipment but rather was properly categorized as a machine. We understand from our discussions with cognizable General Services Administration personnel, however, that this system is listed under an ADPE Federal Supply Schedule (FSS group 74, part VI, section B, FSC class 7440) and that this schedule is not mandatory for use by any agency of the Federal Government. You have correctly pointed out that the existence of a Federal Supply Schedule contract does not waive the requirement for full competition in obtaining automatic data processing equipment. B-176066(2), August 28, 1972. Where, as here, the purchase involves ADPE, GSA has exclusive authority to acquire general purpose ADPE and to promulgate regulations in furtherance of that authority and such regulations are binding on all Federal agencies. 51 Comp. Gen. 457 (1972). GSA has specified certain procedures and requirements for the procurement of ADPE in subpart 101-32.4 of the Federal Property Management Regulations, 41 CFR 101-32.4. In FPMR 101-32.407(c) it is provided that the existence of a Federal Supply Schedule contract does not preclude or waive the requirement for full and complete competition in obtaining ADPE. Therefore, it is our view that the Army failed to comply with applicable regulations respecting the procurement of ADPE and, in effect, made a sole-source award to Actron without a determination and findings justifying such action.

However, as noted above, the equipment was delivered and installed on January 3, 1973. Furthermore, the record in the instant case contains documentation that we believe adequately demonstrates that, as between you and Actron, only the Actron equipment was capable of satisfying the Army's needs. In this connection, the record shows that in addition to comparing the equipment and prices listed on the respective FSS contracts, the procuring agency received a presentation from a representative

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of your company and conferred with users of both your equipment and Actron's equipment before making its selection. In these circumstances, no remedial action by our Office would be justified.

However, we are advising the Secretary of the Army of our view respecting the applicability of the cited ASPR and GSA regulations relating to the procurement of ADPE.

Sincerely yours,

Paul G. Demblin

For the Comptroller General
of the United States