



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

B-177816

May 16, 1973

30923

The Honorable Robert V. Froehle
The Secretary of the Army

Dear Mr. Secretary:

Reference is made to letters dated March 9 and April 13, 1973, reference AMCCG-P, from The Deputy General Counsel, Army Materiel Command, furnishing reports concerning the protest of G & G Electronics Company against the rejection of its bid under IFB M/MO1-73-B-0180, issued by the Army Missile Command (AMCOM), Redstone Arsenal, Alabama.

The subject solicitation was issued on October 10, 1972, as a total small business set-aside, and contemplated an accumulative quantity requirements-type contract for cable assemblies. G & G's bid was the lowest of the eight received as of the bid opening on November 9, 1972. However, G & G had failed to make any entry in Section B-15 of the solicitation, which states in pertinent part:

**B-15 BASIS FOR EQUITABLE EVALUATION OF GOVERNMENT
PRODUCTION AND RESEARCH PROPERTY:**

A. It is not the desire of the Government to purchase or have purchased for its account any facilities, special tooling and/or special test equipment for use in performance of any contract awarded pursuant to this solicitation.

B. The offeror is expected to provide all facilities, special tooling, and special test equipment required in the performance of this proposed contract except that existing Government-owned facilities, special tooling and special test equipment (hereinafter described as Government Production and Research Property - ASPR 13-101.9), presently in his possession or in the possession of a proposed subcontractor, which he plans to utilize and which he must identify as required by paragraphs C, D, and E below.

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NOTE: FAILURE TO RESPOND TO THE FOLLOWING APPLICABLE PORTIONS OF THIS SPECIAL PROVISION SHALL CONSTITUTE BASIS FOR REJECTION OF OFFER AS NONRESPONSIVE.

C. 1. This offer precludes the use of Government production and research property in possession of contractors for which rent is not being paid, or for which rent-free use is not authorized.

C. 2. Offeror will, in all cases, complete the applicable blocks; Offeror and/or his subcontractor will will not use Government production and research property in performance under this proposed procurement. If use of Government production and research property is proposed, offeror or his subcontractor has rental agreement , proposed rent-free use .

In the solicitation, a blank space appeared at the beginning of the second line of paragraph C. 2., not the third line as shown above. MICOM regarded the lack of entries in paragraph C. 2. of Section B-15 as precluding a determination of whether G & G's bid was based on the use or non-use of Government property, a factor which affected the evaluated bid price. G & G's bid was therefore rejected as nonresponsive. Award to Woodard Electric Co., the sole bidder who placed an "X" at the beginning of the second line of paragraph C. 2, has been withheld pending our decision.

G & G protested against the rejection of its bid on the basis that Section B-15 of the IFB provided no block in which a bidder could indicate that his performance "will not" entail the use of Government property; that it had not in the past and did not now intend to use Government property; that its bid was approximately \$4,000 to \$5,000 lower than that which the Government proposes to accept; and that its failure to make an entry on its copy of the solicitation should be waived as a minor irregularity.

It appears that the underlying rationale of our decision B-175165, April 6, 1972, is applicable to this case. In that decision we stated:

We believe that the failure to check either block in the certification together with the lack of information called for if Government Property is required, means that the low bid was not conditioned on the use of any Government Property, which apparently is not available in any case. In the circumstances the legal effect of what the low bidder submitted is the same

as if he had checked the second block indicating no requirement for the property. Therefore, the failure to check the block did not give the low bidder any option or other undue advantage.

Under the applicable procurement statute, 10 U.S.C. 2305, bids are required to conform to the terms and essential requirements of the advertised invitation to be eligible for award. However, both paragraph 10(b) of the Solicitation Instructions and Conditions (Standard Form 334, March 1969, General Services Administration) and Armed Services Procurement Regulation (ASPR) 2-405, permit waiver of minor informalities or irregularities in bids. ASPR 2-405 defines a minor informality or irregularity as one "which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders." In the circumstances, it is our view that [the low bidder's] failure to complete the applicable clause was properly waived as a minor informality.

Similarly, in the instant case, we believe the absence of any entry in Section E-15, paragraph C.2, particularly when considered in conjunction with the omission of the "will not" block, can reasonably be interpreted to mean only that the bid is not conditioned on the use of Government-owned property. Also, we further believe that it could be logically contended that in the absence of a block to be checked by "will not" bidders there was no requirement for a specific entry in paragraph C.2 by bidders not proposing to use Government property and for such bidders the paragraph was self-executing. Our decision D-165789, February 27, 1969, relied upon by HIGCO in rejecting G & G's bid, is distinguishable in that it involved a bidder which represented it would require the use of Government property, but failed to indicate whether that use was on a rent-free or rent-charge basis.

Accordingly, we are of the opinion that, even if it could be held that bidders not proposing to use Government property were required by the IFB to make some specific indication thereof in paragraph C.2, the absence of any such entry in paragraph C.2 by those bidders should be waived as a minor informality or irregularity. It is therefore our

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view that the bid of G & G, as well as all other similar bids, should be considered responsive and evaluated for award on the basis that Government-owned property will not be used in the performance of any resulting contract.

The file enclosed with the letter of March 9 is returned.

Sincerely yours,

PAUL G. DENBLING

For the Comptroller General
of the United States

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