



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

B-178071

May 22, 1973

30955

Fox and McGregor  
2011 Eye Street, N. W.  
Washington, D. C. 20006

Attention: Malcolm P. McGregor, Esq.

Gentlemen:

Reference is made to your telegram of February 21, 1973, and subsequent communications protesting the award of a contract to anyone other than your client, DENRO Laboratories, Inc., under Invitation for Bid (IFB) N00039-73-B-0121, issued November 15, 1972, by the Department of the Navy, Naval Electronic Systems Command, Washington, D. C., as "Step II" of a two-step formally advertised procurement. Your protest is focused upon the amount of time, number of inquiries and responses necessary to render TIA's proposal acceptable.

Under "Step I," Request for Proposals No. N00039-72-R-0121(Q), dated February 9, 1972, technical proposals without prices or cost estimates were solicited for the production and delivery of quantities of the AN/FSA-58 Communication Control System for Operational Communications System plus accessories and repair parts therefor.

The record states that proposals from six firms were received and, upon technical evaluation, three proposals were determined to be unacceptable and those firms were so advised. The proposals of your client, Virginia Electronics Company, Inc. (VELCO), and Technical Industrial Associates, Inc. (TIA), were determined to be reasonably susceptible of being made acceptable. Accordingly, these latter firms were advised of the deficiencies in their respective proposals, and were instructed to submit clarifying and supplementary information directed to the correction of such deficiencies. At various times, further information of this nature was solicited from each of these offerors until, by November 1, 1972, all three proposals were determined acceptable. Consequently, the subject IFB (Step II) was issued to these offerors, and bid opening on December 12, 1972, revealed TIA as the low bidder at a total amount of \$3,485,830, followed by your client at \$3,887,826, and VELCO at \$4,455,647.

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A preaward survey of TIA concluded that it lacked only adequate financial resources to perform the contract. Accordingly, since TIA is a small business concern, a Certificate of Competency was sought by TIA and received on February 12, 1973. The award was made to TIA on April 9, 1973.

You contend that since the proposals of your client and VELCO were apparently considered to have been made acceptable by the end of August, the contracting officer should have concluded discussions at that time rather than extend discussions for more than an additional 60 days. You believe your position is in accord with Armed Services Procurement Regulation (ASPR) 2-503.1(e) which provides in pertinent part that the contracting officer may proceed directly to Step II where he determines that there are sufficient proposals in the acceptable category to assure adequate price competition and that further effort and delay to make additional proposals acceptable and thereby increase competition would not be in the best interest of the Government.

Moreover, you have expressed your concern that since seven submissions were furnished by TIA upon the Navy's request, five of which were made during a period of two months after it had been determined that the proposals of your client and VELCO were acceptable, there may have been a basic or material change in TIA's proposal contrary to ASPR 2-503.1(a)(viii).

With regard to your allegation that the contracting officer should have proceeded to Step II when the proposals of your client and VELCO were determined acceptable, the portion of ASPR 2-503.1(e) which you have cited as support for your position refers to the categorization of proposals as submitted. Inasmuch as none of the three proposals ultimately determined acceptable were categorized as acceptable upon initial evaluation, that provision is not regarded as being supportive of your allegation. While this paragraph of ASPR also provides that in initiating requests for additional information the contracting officer shall fix an appropriate time for bidders to conclude discussions and the submission of additional information, it also permits the contracting officer to extend such time in his discretion. Although the record does not indicate that the contracting officer initially fixed a time for concluding discussions, in view of the discretion accorded him by the referenced ASPR provision to extend the discussion period this is considered to be merely a procedural defect which does not affect the validity of the discussions conducted with, and submissions by, TIA in September and October.

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As for your concern that a basic change may have taken place in TIA's initial proposal, we have examined the complete submissions furnished the procuring activity by TIA and we do not find that any basic changes were made to the original proposal.

We are therefore unable to ascertain any legal basis upon which to object to the actions of the procuring activity with regard to the qualification of TIA's technical proposal under Step I.

On the day of the award, April 9, 1973, our Office was orally notified by the Department of the Navy, in accordance with ASPR 2-407.8(b)(2), that an award was required to be made prior to the issuance of our decision on the protest. In this regard, it was determined by the procuring activity, pursuant to ASPR 2-407.8(b)(3), that since the equipment involved in the subject procurement was air traffic controller communications equipment and therefore safety related, there was a need for an award as promptly as possible. Additionally, due to the fact that the Certificate of Competency issued to TIA was to expire on April 12, 1973, and any renewal thereof would likely entail a further delay which would be unacceptable, it was determined that an immediate award would be advantageous to the Government.

By your letter of April 13, you state that you first learned of the award through the Wall Street Journal, and thereafter by a routine letter from the contracting officer dated April 9, addressed to your client.

You object to the failure of our Office to notify you or your client that an award had been made, and the basis upon which it was made. You further object to the determination that an award was required to be made prior to the issuance of our decision.

The duty of notifying protesting bidders of awards made pursuant to ASPR 2-407.8(b)(3) is charged to the contracting officer by the provisions of that paragraph, and it is not the customary practice of this Office to also notify the protesting bidders when advice is received of such awards. While the contracting officer's letter of April 9 did not set forth the basis for making the award prior to resolution of the protest, such information is not required to be conveyed to the protesting bidder by the referenced section. Our Office has acknowledged the authority granted to the contracting agencies to make awards, prior to the resolution of protests, under the circumstances set out in ASPR 2-407.8(b)(3). B-177587, April 3, 1973. Since the reasons given for the awarding of the contract appear consonant with that ASPR paragraph and since the file was properly documented, we find no basis upon which we may object to the award.

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Accordingly, your protest must be denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States