



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

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B-178424

June 28, 1973

T. Murray Toomey, Esq.
Suite 603, Carritz Building
1625 Eye Street, NW,
Washington, D.C. 20006

Dear Mr. Toomey:

We refer to your letter dated June 12, 1973, and prior correspondence, on behalf of Bucknell Engineering Co., Inc., protesting the determination that your client's proposal submitted in response to request for proposals (RFP) No. H00027-73-R-0032, issued by the Contracting Officer, United States Marine Corps, Headquarters, was unacceptable.

For the reasons set forth below, the protest is denied.

The RFP solicited offers for a quantity of solid state frequency converters in accordance with an incorporated purchase description. In the lower right hand corner of the first page of the purchase description appeared the notation "FSC 6130," referring to Federal Supply Group 6130. This reference was made pursuant to paragraph 5-220 of Defense Standardization Manual 4120.3M, January 1972. Defense Supply Agency Cataloging Handbook H2-1 (Federal Supply Classification), dated January 1973, states on page 25 as to Group 6130:

Converters, Electrical, Nonrotating

NOTE.--This class includes devices employing a means other than mechanical rotation for changing electrical energy from one form to another (i.e., AC to AC, DC to DC, AC to DC, and DC to AC). Excluded from this class are rectifying crystals (Class 5961) and transformers (Classes 5950 and 6120).

Includes Complete Battery Charging Equipment, Nonrotating; Power Supplies, Multiplication.

Excludes Rectifying Tubes; Rotating Equipment; Semiconductor Devices and Associated Hardware.

It is reported that the six proposals received were forwarded to the Director, Technical Division, for evaluation as (1) acceptable; (2) unacceptable but by reasonable discussion as to clarification and amplification

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could be made acceptable; or (3) clearly unacceptable or inadequate and incapable of being upgraded to an acceptable proposal without a complete proposal revision. The Bucknell proposal was evaluated and rejected for the following reasons:

1. The following elements of the specification (HQPD) are not addressed by the proposal:

- a. PARA 3.3.4 - Fusing
- b. PARA 3.3.6 - NOISE
- c. PARA 3.6 - Performance (Subelement (a) overall efficiency)
- Performance (Subelement (c) 30 second start)
- d. PARA 3.3.1 - Case (Subelement (c) one orientation)
- Case (Subelement (n) accessory compartment)

2. In addition to the specification (HQPD) deficiencies given above, the proposal is nonresponsive because it offers a hybrid device which is not a "solid state, electronic control, parallelable 5-KVA, frequency converter" as required by HQPD 72-3, paragraph 1.1 (Scope). Bucknell is offering the "energy storage capabilities of a rotating generator." A "rotating generator" is an electro-mechanical device and comes under Federal Supply Class 6125. A solid-state converter utilizes no rotating machinery, with exception to cooling fans, and comes under Federal Supply Class 6130. While the uniqueness of the proposed machinery is appreciated, it does not meet the requirements of IAP # 86-72, Revision #1, dtd 15 May 1972.

3. In addition to the fact that the proposal is nonresponsive, it is noted that it does not offer a single instance of previous experience in the manufacture of solid state, frequency converters. The primary experience of the offeror relates to motor generator equipment which involves rotating machinery.

4. Accordingly, the proposal is nonresponsive and is incapable of being upgraded to an acceptable proposal without complete revision.

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(1) Bucknell proposed a frequency converter employing mechanical rotation instead of a solid state frequency converter.

i.e., a converter employing other than mechanical rotation. The Marine Corps requires the frequency converters for use in electronic shelters, transportable shelters and air control and command systems, all of which have personnel working in a small and confined area where noise levels and efficiency are of the utmost importance. It is the technical judgment of the Marine Corps based on the state of the art for frequency converters as documented by qualified testing that only a solid state frequency converter will provide the required performance. It is poignant that Bucknell's technical proposal addressed neither noise or efficiency.

(2) Bucknell described its frequency converter as a "unique method of power generation." The Marine Corps concurs with Bucknell in that the proposed frequency converter is unique. However, even assuming arguendo that Bucknell's converter was within the class of converter required, it is the technical judgment of the Marine Corps that it could not invest procurement funds, appropriated to acquire equipment for field use, in the item until it had subjected the item to evaluation and test in order to establish its performance.

As a result of the technical evaluation, the contracting officer advised Bucknell that its technical proposal had been determined to be unacceptable, and not reasonably susceptible of being upgraded. Subsequently, representatives of Bucknell met with the contracting officer and later, by letter, attempted to explain the deficiencies set forth in the technical evaluation.

There is no question but that the frequency converter offered by Bucknell in its proposal employs mechanical rotation for changing electrical energy from one form to another rather than a means other than mechanical rotation--the latter considered to be a material requirement by the Marine Corps. You argue that the mere insertion of "FSC 6130" on the purchase description, which stipulates performance rather than design characteristics, does not impose any specification requirement on offerors that the converter comply with the designated supply class description. You also take issue with the Marine Corps reliance on the requirement that the frequency converter be "solid state." According to the Marine Corps, a "solid state" frequency converter utilizes no rotating machinery with the exception of cooling fans. The Marine Corps characterizes cooling fans as ancillary components which do not relate to the basic function of the converters. Both you and the Marine Corps invite our attention to the following definition of "solid state" in the Institute of Electrical and Electronics Engineers, Inc., Standard Dictionary of Electrical and Electronic Terms:

An adjective used to describe a device, circuit, or system whose operation is dependent upon any combination of optical, electrical, or magnetic phenomena within a solid. Specifically excluded are devices, circuits, or systems dependent upon the macroscopic physical movement, rotation, contact, or non-contact of any combination of solids, liquids, gases, or plasmas.

We concur with your observation that a literal reading of that definition, when applied to a frequency converter, would not appear to permit any portion of the frequency converter to employ a rotating component such as the cooling fans. Also, as we understand it, the function of the cooling fans is only to dissipate heat while the principal function of the frequency converter--the conversion of energy from one form to another--is being performed. Therefore, we believe that the above definition of "solid state" should be construed as contemplating that the principal functions of the required frequency converter should not be accomplished with rotating equipment such as that offered by Bucknell. Furthermore, we agree that the insertion of "FSC 6130" does not represent the clearest method of stating the requirement for an "other than mechanical rotation" frequency converter. However, the stipulation of "solid state" coupled with the "FSC 6130" designation, in our view, imposed upon all offerors a requirement that the frequency converter employ a conversion means other than mechanical rotation. However, we note that all other offerors proposed frequency converters consistent with the Marine Corps definition of "solid state" and "FSC 6130."

Although Bucknell was not informed in detail of the principal reasons for the rejection of its proposal, those reasons have been made known to it during the course of this protest. Even assuming that the Marine Corps had not clearly set forth the above requirement in the RFP, an amendment to the RFP could have been issued for purposes of clarification. But, no purpose would have been served since Bucknell has not and apparently will not offer a "solid state" frequency converter as required by the Marine Corps. See 51 Comp. Gen. 247, 250, 251 (1971).

You point out that the purchase description contains first article approval tests which could be used to establish Bucknell's compliance with the specification and the Marine Corps requirements. Approval of first article involves testing and evaluating for conformance with specified contract requirements before or in the initial stage of production under a contract. See paragraph 1-190, et seq., of the Armed Services Procurement Regulation. Therefore, the first article testing provisions come into play only after a contract has been . . .

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awarded to an offeror complying with all stated material requirements of an RFP. Such is not the case here since, as concluded above, Bucknell's offer does not comply with a material requirement of the RFP.

While it is unfortunate that the "unique" method of power generation proposed by Bucknell apparently cannot be evaluated by the Marine Corps for this procurement, there is no basis upon which our Office may object to the rejection of the Bucknell proposal. The protest is therefore denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States