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

B-177804

June 8, 1973

B0974

Westinghouse Electric Corporation
1801 K Street, N.W.
Washington, D.C. 20006

Attention: John L. Howland, Esquire
Counsel, Government Affairs

Gentlemen:

This is in response to your letter of January 12, 1973, and subsequent correspondence, protesting against the award of a contract under RFP N00191-73-R-0059, issued November 20, 1972, by the Charleston Naval Shipyard, South Carolina.

The solicitation was for the overhaul of and erosion fix on the two main propulsion turbines of the nuclear submarine USS Sam Houston (SSBN-609). Proposals were received from Westinghouse (the turbine manufacturer) and from the General Electric Company (GE). After negotiations were conducted with both offerors, award was made to GE on January 3, 1973, on the basis of its lower price.

Paragraph VII.2.b.10 of Section F of the RFP (page 29) stated:

> Corrosion-Erosion proof the turbines in accordance with NAVSHIPS letter Serial No. 5146-425 dated 1 December 71 with the following exceptions.
>
> Delete Westinghouse applicable drawings 672J052 and 787D693 and substitute the following plans.
>
> Westinghouse Drawing 715W459 * * *
> Westinghouse Drawing 5210070 * * *
> Westinghouse Drawing 300D126 * * *
>
> Delete Welding Electrode MIL-E-22200/2 Type MIL-309-15 and in place refer to the welding electrodes called out in the appropriate plans for the specific areas and locations.

* * * * *



[Protest of Navy Contract Award]

~~718377~~ 091876

You claim that this section required the use of drawings proprietary to Westinghouse, and that the award to GE indicates either that the Government furnished such drawings to GE or that the GE proposal deviated from the specifications. You state that if there was a deviation, the GE proposal and the Westinghouse proposal were not submitted on an equal basis, since GE normally uses the "inlay" method of erosion fix, which is cheaper than the "insert" method called for by the Westinghouse drawings specified in the RFP.

The Navy denies that it furnished any Westinghouse proprietary data to GE, and states that GE planned to use its own "inlay" method, rather than the Westinghouse method, in performing the contract. The Navy asserts that this would not be contrary to the contract specifications, since it interprets NAVSHIPS letter 5146-325, referenced in the RFP, as allowing any method of corrosion-erosion proofing including the GE method.

NAVSHIPS letter 5146-425 contains repair "recommendations" for nuclear submarine turbines. Three enclosures, each listing certain submarines and setting forth repair recommendations for a specific manufacturer's turbines, are included with the letter. Enclosure 2 contains recommendations for GE turbines, while Enclosure 3 deals with Westinghouse turbines. Enclosure 3 states that the turbines are to be corrosion-erosion proofed in accordance with specified Westinghouse drawings and that this repair "is to be accomplished on the following ships." There follows a listing of 13 submarines, including SSBN-609.

We do not read the RFP specifications as setting forth recommendations only. Although the NAVSHIPS letter does set forth "recommendations" rather than mandatory requirements, we think the provision of paragraph VII 2.b.10 of Section F of the RFP, requiring corrosion-erosion proofing "in accordance with" the NAVSHIPS letter, taken together with the detailed steps and procedures included in the letters indicated that the work was to be performed in accordance with the set of recommendations applicable to SSBN-609. If this was not the result desired or intended by the Navy, we think a clearer statement of the Navy's intended meaning should have been included in the specifications section of the RFP.

However, we believe that Westinghouse should have been aware of the Navy's interpretation of the specifications. The record shows that on November 3, 1972, Westinghouse was specifically advised by the Navy that the Government was planning to seek competition for this procurement. Further, it is reported that on November 8, 1972, Westinghouse,

proposed that its ring insert method of erosion fix be substituted for the inlay method. As indicated above, the ring insert method was to be accomplished in accordance with proprietary drawings that only Westinghouse had. The Navy approved the proposal and then issued the RFP which incorporated the new Westinghouse method. Negotiations were conducted with both Westinghouse and GE after receipt of initial proposals. Amendment 0004 to the RFP, issued on December 19, 1972, requested the submission of best and final offers by the closing date of December 28, 1972. We believe these circumstances clearly indicated the competitive nature of the procurement. We further believe that since the Westinghouse drawings referenced in the RFP were proprietary, Westinghouse should have realized that the Navy regarded an acceptable corrosion-erosion control methods other than that set forth in the Westinghouse drawings. This being so, we think Westinghouse had sufficient opportunity during the negotiation period to submit a proposal based on the inlay method or to formally object to a reading of the specifications which allowed any method other than its ring insert method, Westinghouse did neither. As the contracting officer states, "Only after WEC (Westinghouse) itself had proposed that it be permitted to use the ring insert method and after award to GE did WEC allege that WEC has been unfairly deprived of an opportunity to base its proposal on the inlay method of performing the erosion fix."

You point, however, to a provision in Section F of the RFP, on page 25, paragraph 1, as indicating that GE could not properly compete for the award. This provision states that the two turbines would be delivered to Westinghouse at Sunnyvale, California, for alterations.

You also point to paragraph VII-2.c.3, on page 31 of the RFP, which states that deviations from design tolerance will not be allowed unless otherwise recommended by "the apparatus manufacturer and agreed to by CHSY (Charleston Navy Shipyard)", as further indicating that only Westinghouse could properly receive the award.

The Navy explains that the provision on page 25 of the RFP was a clerical oversight, unquestioned by either offeror, which should have stated that the turbines would be delivered to the successful contractor's plant, just as the clause entitled "Government Furnished Material" at pages 9 and 17 of the RFP indicates. With regard to the provision on page 31, the contracting officer believes it has no relevancy to your protest since any deviations from design tolerances, requested by no matter whom must be approved by the contracting officer.

We believe the provisions you have referred to in Section F of the RFP demonstrate that the RFP was not carefully prepared. Nevertheless, we do not find that Westinghouse was unfairly treated as a

result of the Navy's interpretation of the specifications or that the award to GE was illegal.

Accordingly, your protest must be denied. However, we are today informing the Secretary of the Navy of the need for greater care in the drafting of specifications used for this type of procurement.

Sincerely yours,

Paul G. Dembling

Comptroller General
Acting of the United States