



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

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AUG 28 1973

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Attention: Robert H. Tuttle, Esq.

Gentlemen:

Reference is made to your protests on behalf of Speaker Sortation Systems (SSS) against the awards of contracts under invitations for bids (IFB) Nos. DACW87-73-B-9018 and -9024, issued by the United States Army Corps of Engineers, Huntsville, Alabama.

Since substantially the same issues and parties are involved in both protests, we are considering the protests in a single decision.

On November 2, 1972, the Huntsville Engineer Division issued IFB DACW87-73-B-9018 for sack and parcel sorters for 14 United States Postal Service (USPS) bulk mail centers. Thereafter, four amendments were issued as follows:

(1) Amendment 0001 was issued on November 28, 1972. It changed first article approval to first production unit testing; a spare parts requirement was added; six drawings were deleted; and certain delivery dates were revised.

(2) Amendment 0002 was issued on December 1, 1972, and extended the bid opening date until December 20, 1972.

(3) Amendment 0003 was issued on December 8, 1972. It deleted a few requirements, included narrative changes to two drawings, and included a change to the pricing structure for bid section "E."

(4) Amendment 0004 was issued on December 12, 1972, and changed the solicitation substantially. Approximately 106 of the drawings were revised and 24 new drawings were added, plus the requirements for two of the modules were altered. Compared to the original IFB, amendment 0004 changed 51 percent of the drawings. From the date of issue of the IFB to the date of bid opening, bidders were allowed a total of 56 days.

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Three of the drawings contained in the IFB were issued without requiring patent markings on the equipment indicating that it was manufactured in accordance with the license agreement between USPS and A-T-O Inc. (the corporation in which RMI is a division). The contracting officer sought to rectify this error after bid opening by notifying all bidders whose names appeared on the solicitation mailing list of the omitted legend. Also, upon award of the contract, a modification to the contract was issued which reinstated the restrictive legend on the three drawings in question.

Further, a prior contract had been awarded to Rohr Industries, Inc., for a product improvement program and standardization for the high-speed parcel and sack sorters. The contracting officer considered Rohr-Plessey, a corporation separate and apart from Rohr Industries, Inc., and awarded it a contract under the immediate IFB.

With respect to the foregoing, you contend (1) that amendment 0004 was a major revision and sufficient time was not provided between receipt of the amendment and the date of bid opening to allow proper technical evaluation; (2) that the violation of the A-T-O - USPS license agreement should allow cancellation of the subject IFB; and (3) that the Rohr-Plessey Corporation should not have been allowed to submit a bid under this solicitation due to an organizational conflict of interest as defined by appendix "G" of ASFR.

The second solicitation, -9024, was issued on November 27, 1972. Six amendments were subsequently issued, the effects of which were minor clarifications and extensions, a restructuring of one of the bulk mail center requirements, establishment of a first production unit test requirement and deletion of certain other items.

Drawing E-167136 (sheet 1, revision "A") contained in the IFB also was issued without requiring the restrictive legend required by the license agreement with respect to patent markings. As in the former situation, the contracting officer sought to correct the omission after the opening of bids by dispatching notices to all bidders whose names appeared on the mailing list for the solicitation. Also, after award of the contract, a modification was issued reinstating the restrictive legend on the drawing.

As in the former IFB, the matter of organizational conflict of interest was resolved in favor of the Rohr-Plessey Corporation on the same basis as noted above.

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Your contentions concerning this solicitation are similar to those raised under -9018 and they will be discussed concurrently.

**7. WAS SUFFICIENT TIME ALLOWED ALL BIDDERS TO PERMIT THEM TO PREPARE AND SUBMIT BIDS?**

As stated in paragraph 2-202.1 of the Armed Services Procurement Regulation (ASPR), consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time to permit prospective bidders an adequate opportunity to prepare and submit bids. It is further provided that, as a general rule, bidding time shall be not less than 30 calendar days when procuring other than standard commercial articles or services.

Your contention is that SSS was not provided sufficient time to properly prepare a bid. In rebuttal, the procuring activity notes that IFB -9018 ran for a period of 56 days and IFB -9024 for a period of 50 days. Both of these periods were beyond the minimum requirement of ASPR 2-202.1. In the present case, there is no evidence of a deliberate intention to exclude SSS from bidding on the subject procurements. Further, the record indicates that the "urgent" need for the services dictated the short time for bid submission after the final amendments. Also, several bids were received in response to both invitations and at prices which compare favorably with those expected by the procuring activity. Since contract awards have been made at reasonable prices, we must conclude that the alleged short time provided for bid submission did not deprive the Government of the benefits resulting from adequate competition. See B-177962, March 28, 1973; B-176588(2), February 3, 1973; and B-147714, February 15, 1962.

You have also contended that the extent of amendment 0004 on IFB -9018 was of such major significance that an extension of time for bid preparation should have been granted. On the other hand, the contracting officer has stated that such changes and alterations, admittedly voluminous in amount, were in reality of a minor and insignificant nature and easily could have been properly dealt with in the time remaining for submission of bids. An engineer in our Office has made an independent review of the drawings and specification changes contained in amendment 0004 and has concluded that, although quite numerous, none of the changes were of such enormity that they could not have been satisfactorily dealt with in the allotted time remaining.

Therefore, we conclude that there has been no violation of ASPR 2-202.1 and that the contracting officer's refusal to extend bid opening was neither arbitrary nor capricious.

**II. WAS THE VIOLATION OF THE A-T-O - USPS LICENSE AGREEMENT  
SUFFICIENT GROUNDS TO CANCEL BOTH OF THE IFB'S?**

During the course of both procurements, several drawings were released without advising prospective bidders that the equipment was to contain patent markings indicating that it was manufactured in accordance with the license agreement. This is not a situation where the Government did not have a right to see the drawings for the procurement. The failure in this case was the omission of the required legend on the drawings. Those concerns that were furnished the drawings have been advised of the omission and the requirement for the legend has been included in the contracts awarded. Therefore, the licensor's interest is deemed to have been protected and there is no necessity to cancel the solicitations.

**III. SHOULD ROHR-PLESSEY CORPORATION HAVE BEEN PRECLUDED FROM  
BIDDING UNDER EITHER SOLICITATION DUE TO AN ORGANIZATIONAL  
CONFLICT OF INTEREST AS DEFINED BY APPENDIX "G" OF ASPR?**

You contend that since Rohr Industries, Inc., was awarded a prior contract from the USPS (No. 72-1-00519) concerning specification and requirement clarification, it should be precluded from bidding (themselves or through Rohr-Plessey) on the subsequent procurements due to a conflict of interest as defined by appendix "G" to ASPR. However, we find this contention to be without merit.

As we stated in 48 Comp. Gen. 702 (1969), appendix "G" is not self-executing, but specifically states in the last sentence of the second paragraph of the Preamble, that prospective contractors will be advised of the applicability of the rules by a notice in solicitations and by a clause in resulting contracts. Such also clearly indicates that the rules established are general and that their applicability in particular cases is to be determined by the contracting officer. See, also, 49 Comp. Gen. 463 (1970). In this instance, we have been informed that the USPS contracting officer involved with contract 72-1-00519 did consider the applicability of appendix "G," but decided not to include a provision in the contract.

ASPR 1-113.2(a), dealing with organizational conflicts of interest, provides that appendix "G" cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the appendix. It is further provided that prospective contractors must be advised of the applicability of such rules and be given an opportunity to negotiate the terms of the clause and its application. The contract awarded to Rohr in 1972 contained no clause restricting Rohr's activities on later procurements.

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ASPR 1-113.2(e) provides that:

"The contracting officer shall not impose restrictions under the Appendix in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. \* \* \*"

The contract clause is the controlling factor. This conclusion is supported by the House Report concerning "Avoiding Conflicts of Interest in Defense Contracting and Employment" (House Committee on Government Operations, H. Rept. 917, 88th Cong., 1st sess. (1963)), at page 72:

"It would seem to follow \* \* \* that the contract clause is the controlling factor. If the prohibitions cited and illustrated in the directive do not apply in any given case, they will not be embodied in the terms of the contract. In such cases, the contractor need not be concerned about present or future restrictions or prohibitions. Thus, as each individual contract is written, a determination is made whether exclusion clauses are relevant and hence applicable."

It therefore seems clear that appendix "U" cannot be applied and neither Rohr Industries, Inc., nor Rohr-Plasey Corporation was subject to a contractual restriction on future procurements.

Accordingly, in view of the foregoing, your protests are denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States