



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

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July 25, 1973

Malcot Machine Products Company  
3504 Heathcote Avenue  
Bronx, New York, 10475

Attention: Mr. Anthony Iglesias  
Vice President

Gentlemen:

Reference is made to your letters dated March 2 and April 30, 1973, protesting any award of a contract under invitation for bids (IFB) No. DSA 400-73-B-6267, issued January 29, 1973, by the Defense Supply Center (Center), Defense Supply Agency (DSA), Richmond, Virginia.

The initial invitation solicited bids on a quantity of 448 (each) guy assemblies. Amendment No. 1 was issued on February 12, 1973, increasing the quantity to 1445 (each) guy assemblies. The invitation was mailed to business concerns appearing on the bidders mailing list No. 59C-11, as of January 29, 1973, and was also synopsised in the Commerce Business Daily. At bid opening on February 23, 1973, nine bids were received. Five of the bidders, including Malcot, failed to acknowledge Amendment No. 1. Accordingly, your bid of \$15.10 per unit included only the initial quantity of 448 units. DSA proposes to make award to A-I-K, Incorporated, as the low responsive and responsible bidder, at a unit price of \$13.59 for the amended quantity of 1445 units.

Your protest is grounded on the contention that your firm has not been afforded an equal opportunity to bid on the amended quantity and therefore the IFB should be readvertised.

You state that a copy of the subject invitation was addressed to your predecessor organization, Dalton Metal Fabricators, Inc. (Dalton), and was received by you on February 1, 1973, but that the amendment was not received. You note that by letter dated December 18, 1972, you advised the Center that Malcot had absorbed Dalton and wished to be considered for any future purchases of four items of guy assemblies, including the item solicited in the instant case. Thereafter, the contracting officer requested that you complete a Bidders Mailing List Application. The record shows that a completed

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form dated January 8, 1973, was received by the Center on January 18, 1973, and that Malcot was placed on Bidders Mailing List 59C-11 on January 31, 1973, or two days after issuance of the solicitation.

It is reported by DSA that on March 1, 1972, Dalton was removed from the bidders mailing list because it failed to respond to prior invitations for similar items. The Center has no record of having furnished Dalton a copy of the invitation, notwithstanding your contention that a copy was mailed to Dalton by the Center.

Additionally, it is reported that neither Dalton nor your firm was furnished the amendment since copies were furnished only to bidders appearing on the list used for the original solicitation and to firms which had requested and were furnished copies of the original solicitation. It is reported also that the earlier list (as of January 29, 1973) was used in issuing the amendment in accordance with a standard policy apparently intended to protect against overlooking bidders who, during the interim, may have been removed from the original list.

You point out that Dalton advised the prior contracting officer by letter of March 30, 1972, that it had in stock 1000 of the subject guy assemblies in addition to other items. However, the report states that this letter was not construed as a request to be placed on a bidders mailing list. In addition, the contracting officer on this procurement advises that he had no knowledge of this letter.

You also question whether Dalton was in fact removed from the bidders list in March 1972 since Dalton received solicitations for guy assemblies in October and November of 1972 and was requested to submit a quotation in February 1973. In this connection the agency has explained that in one instance Dalton requested a copy of the solicitation (IFB DSA 400-73-J-4276) and in the other case Bidders Mailing List 59C-11 was not applicable and a different mailing list was used (for IFB DSA 400-73-B-3149). Furthermore, the February 1973 procurement (Small Purchase Order DSA 400-73-H-X019, calling for a different guy) was a small purchase and Dalton was requested to submit a quotation since it was a previous supplier. (Dalton was awarded this purchase.) In this connection it is reported that bidders lists are not normally used for small purchases by the Center. Moreover,

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With respect to two small procurements for the subject guy assembly in January 1973, it is reported that you were not solicited since the small purchase buyer requested quotes from suppliers listed in the Thomas Register of American Manufacturers, 62nd Ed., 1972, under "Guys: Prefabricated" and "Rope-Wire" at volume 3, p. 3695 and volume 5, pp. 7001-7004, respectively, and neither Dalton nor Malcot was listed thereunder.

Your correspondence raises questions as to DSA's past actions in soliciting bids from Guytronics, another supplier of guys, and implies that the treatment given that company is inconsistent with the treatment given Dalton and Malcot. While DSA reports that a solicitation was issued to Guytronics in the instant case because it appeared on the bidders mailing list and that in the past solicitations were issued as a result of an individual request or the buyer having knowledge that Guytronics was a regular supplier, we find insufficient justification for going into a detailed analysis of the reasons for Guytronics being solicited in each of the past procurements mentioned.

While you contend that the failure of the Center to synopsise the amendment in the Commerce Business Daily prevented bidders from obtaining the amendment, we are aware of no requirement for synopsizing an amendment to a solicitation which previously had been synopsized. See Armed Services Procurement Regulation (ASPR) 1-1003.

Finally, you argue that this requirement should be readvertised since (1) other bidders were nonresponsive for failure to acknowledge the amendment affecting the quantity required; (2) some of the bidders have no record of having received the amendment; and (3) your bid price would have been less than the lowest bid received.

It is fundamental that once bids have been opened, preservation of the integrity of the competitive bid system dictates that an award be made unless there is a compelling reason to reject all bids and cancel the invitation. See Armed Services Procurement Regulation (ASPR) 2-404.1. If a bidder fails to receive a material invitation amendment, it has been our position that such failure does not constitute a basis for cancelling the invitation in the absence of a clear indication of a conscious or deliberate intent to exclude the bidder. 34 Comp. Gen. 684 (1955); B-171213, December 31, 1970; and B-175217, April 6, 1972.

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Upon review of the record, it is our belief that the Center's failure to furnish your firm with the invitation amendment may have been due to carelessness on the part of the procurement officials.

However, since we find no evidence of a conscious or deliberate intent to exclude your firm from participating in the competition, we do not believe a resolicitation of the procurement is warranted. As to your offer after bid opening of a lower price on the amended quantity, the question of the sufficiency of the competition sought must be determined on the basis of whether adequate competition and reasonable prices were obtained and not on the basis of whether every potential bidder was given an opportunity to bid. 50 Comp. Gen. 565, 571 (1971). We see no reason for disagreeing with the view expressed by the contracting officer that the low responsive bid is fair and reasonable.

Accordingly, your protest must be denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General  
of the United States