



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

B-175493 (2)

40038

OCT 9 1973

Kearna Machinery Co.
P.O. Box 1307
1001 East 14th Street
Sioux Falls, South Dakota 57101

Attention: Mr. L. J. Hill
Engine Sales Manager

Gentlemen:

Reference is made to your letter of June 5, 1973, and subsequent correspondence, in which you protested against the award of a contract made under solicitation No. DACW25-73-B-0025, to Katolight Corporation.

Your protest was based on the allegation that the lowest bidder, Katolight Corporation, intended to furnish engines which were inadequate for the 100KW continuous application specified by the solicitation. As a result thereof, Katolight obtained a \$15,000 advantage over the other bidders and was awarded the contract.

As to these contentions, we concur with the conclusion reached by the contracting officer of the U.S. Army Corps of Engineers that there was no basis for your allegation. As set forth in our decision rejecting the protest filed by In-Trol Division, AMECO Corporation (copy enclosed), the bidders were not required by the solicitation to furnish operating experience information concerning any aspect of the product they were offering. Since such information was not required and none was actually furnished by Katolight, there was no basis for your allegation that Katolight intended to furnish inadequate engines. Further, since Katolight's low bid was unqualified and unconditioned, the award would obligate it to furnish the specified product regardless of its actual subjective intent.

In any event, our Office has consistently taken the position that the procuring activity has the primary responsibility for drafting specifications which reflect the minimum needs of the Government, as well as the responsibility of determining whether the product offered meets the specifications. 44 Comp. Gen. 302 (1964); 38 Comp. Gen. 190 (1958). In the absence of evidence clearly indicating that the specifications as written, or the product being offered, do not reflect those minimum needs, our Office will not object thereto. B-175493, April 20, 1972.

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Accordingly, your protest is denied.

Sincerely yours,

Paul G. Denbling

For the Comptroller General
of the United States

Enclosure