



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

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November 13, 1973

Chandler, Bruner & Blunden
220 Juana Avenue
San Leandro, California 94577

Attention: Leland W. Bruner, Esquire.

Gentlemen:

We refer to a telefax message dated July 31, 1973, from the President, Corrobilt Container Corporation (Corrobilt), and your subsequent correspondence on behalf of Corrobilt, protesting against the award of a contract under request for proposals (No. DMHC23-73-R-0042, issued by the Western Area, Military Transportation Management and Terminal Service.

The subject RFP was issued on May 15, 1973, and sought proposals for a firm, fixed price, indefinite delivery, indefinite quantity type contract to furnish cargo transporter stuffing services at the Oakland Army Base.

On May 23, 1973, Amendment 0001 to Clause 29, Section C, of the Solicitation Instructions and Conditions was issued to all prospective offerors, as follows:

"RESPONSIVE PRICING:

"a. In procuring the services enumerated in this solicitation the Government is meeting a requirement of various Government agencies and instrumentalities. The Government procuring agency is required to equitably and with some precision pass its costs of procuring these services on to the ultimate users of these services. In order to meet this requirement for recoupment of costs from ultimate users the services have been broken down into specific pricing items each of which is described in the specification. To insure that using agencies and instrumentalities are fairly billed for services used and nothing more or less, it is essential that the Government have each item of service so priced as to reflect only costs, overhead, profit and other pricing factors related to each specific item of each schedule.

Protest of Award of Contract for Cargo Transporter Stuffing Services]

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"b. To achieve the requirement outlined in subparagraph a, above, the following conditions are imposed:

"(1) Each item of every schedule must be so priced as to include only those pricing factors which are attributable to the individual item being priced. If as permitted below, in subparagraph b (2), an offeror inserts letters or figures indicating there is to be 'no charge' for an item the offeror will be required to establish either that the item is of negligible value and/or that costs related to that item are not being attributed to some other item for which there is a price inserted. Failure to so price individual items shall be cause for rejection of the entire offer.

"(2) Offerors must submit offers on all items enumerated in each unit price schedule. If there is to be no charge for an item, an entry such as the letters 'N/C' or 'O', must be made in the unit price schedule. Failure to do so shall be cause for rejection of an entire offer."

Basically, you assert that any offer submitted which included a "no charge" or "O" in the price schedule, for any item did not comply with the instructions set forth in the solicitation and must be rejected. We disagree.

Subpart b of Section C (set forth above) specifically provides that a "no charge" or "O" may be inserted where the offeror establishes that the item is of negligible value and/or the costs of that item will not be attributed to an item for which a price has been inserted. In fact, Subpart b(2) demands "an entry such as the letters 'N/C' or 'O' where there is no charge for an item." Consequently, by the terms of the solicitation, the insertion of "N/C" or "O" was permissible.

You contend further that during negotiations the Director of Procurement gave the officers of Corrobilt his interpretation of the meaning of the above amendment which led those individuals to believe that the insertion of "no charge" or "O" would lead to rejection of its offer. You state again, therefore, that all offers with "N/C" or "O" inserted in them should be rejected.

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While the statements made by the Director of Procurement during negotiations (set forth in the transcript of the tapes of the negotiating session) may be subject to several interpretations, we do not believe it is necessary to determine whether or not his statements could have misled Corrobilt's officers. In this case, the record shows that Corrobilt was not prejudiced by any statements made since its relative position among all offerors, insofar as total prices are concerned, was not affected by including a price for the items in Schedules VI and VII. Even if Corrobilt had inserted a "NO" or "O" for these items and had not attributed these costs to other items, its total price offered still would have exceeded the lowest price by a considerable amount.

In any event, since the solicitation provided for the insertion of a "NO" or "O" for items of negligible value, we do not believe the offers in question must be rejected for the reasons you have presented.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General
of the United States