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

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E-178509

December 7, 1973

Wachtel, Wiener and Ross  
1100 Connecticut Avenue, NW.  
Washington, D.C. 20036

Attention: Daniel M. Ross, Esquire

Gentlemen:

Further reference is made to your letter dated April 23, 1973, and subsequent correspondence, protesting on behalf of ABC Systems Corporation (ASC) against the award of a contract to Canadian Commercial Corporation under request for proposals (RFP) No. N00126-73-R-2N2829, issued by the Navy Electronics Supply Office, Great Lakes, Illinois.

You contend that ABC was improperly excluded from consideration for award as the result of an arbitrary determination by the contracting officer that ABC was not within the competitive range.

The above-referenced solicitation was issued on September 15, 1972, for the supply of an estimated quantity of 2,000 frequency multiplier oscillators, identified in the Schedule as:

"FSN 40 5820-760-8922

FREQUENCY MULTIPLIER OSCILLATOR:

COLLINS DRAWING NO. 549-3383-004 Rev. E

and in accordance with the clauses entitled

'Technical Requirements,' 'Quality Assurance Provisions,' and 'Periodic Production Testing.'"

Within Section E of the solicitation there appeared a clause entitled "PROPOSAL TO CONSIST OF SEPARATE PRICING PROPOSAL AND SEPARATE TECHNICAL PROPOSAL," which provided in pertinent part:

"(a) The complete proposal to be submitted on this procurement solicitation is to consist of a separate pricing proposal and a separate technical proposal. The pricing proposal and technical proposal are to be submitted together as the two separate parts comprising the complete proposal and all at the same time. The pricing proposal

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and the technical proposal, as the two separate parts of and like the complete proposal, are subject to the 'Late Proposals' provisions of this solicitation.

\* \* \* \* \*

"(c) The technical proposal is to be submitted as a separate part of the complete proposal, to determine acceptability of the item offered. As used in this context, the word 'technical' has a broad connotation and includes engineering approach, special manufacturing processes, and special testing techniques. The requirements of the technical proposal, i.e., the necessary details such as drawings, data, presentations, etc., are to include design, manufacturing, testing, and performance requirements. The technical proposal is to conform to the essential requirements or specifications of this procurement solicitation.

\* \* \* \* \*

"(e) The technical proposal which the offeror is advised to submit is a fully and clearly acceptable technical proposal without additional explanation or information. However, the Government may, in its sole discretion, request additional information from the offeror of the technical proposal which the Government considers reasonably susceptible of being made acceptable by additional information clarifying or supplementing but not basically changing any technical proposal as submitted and, for this purpose, the Government may discuss any such technical proposal with the offeror.

\* \* \* \* \*

"(h) The technical proposal requirement of this procurement solicitation (i) may be waived for source whose business name combined with his part/drawing/specification number or reference is used in the item description to identify or describe the item required and (ii) may be waived for other sources who as determined by the Government have previously satisfactorily manufactured or furnished the item required, provided that (1) such source submits with his complete request for such waiver (accompanied by any evidence of waiver basis under (i) or (ii)

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above (including pertinent contract numbers as to basis (1)) by the time specified herein for receipt of the complete proposal and (2) that it is understood that such request for waiver (like the complete proposal) is subject to the 'Late Proposals' provisions of this solicitation.

"(1) A complete procurement data package for this procurement is not available from the Government."

Five offers were received by October 30, 1972, the closing date for receipt of proposals. ASC, the low offeror, transmitted its price proposal under cover of a letter which stated in part:

"ASC Systems notes that this is an unrestricted procurement per DD Form 1707. ASC Systems claims technical proposal acceptability for the subject RFP equipment and the right to submit a bid based upon prior approval by competent Government technical authority during the pre-award survey leading to the issuance of Contract N00039-72-C-0292 by the Naval Electronic Systems Command of the Dept. of the Navy on June 15, 1972, which agency determined that ASC Systems was approved to supply not only the module assembly in question but all other assemblies of the AN/SBC-20A Transceiver.

"The equipment shall be built in accordance with Collins Drawing No. 549-3383-004 Rev. E and its subsidiary referenced drawing as provided by the Navy Department under our contract N00039-72-C-0292 and in accordance with the clauses entitled 'Technical Requirements', 'Quality Assurance Provisions', and 'Periodic Production Testing' and all other performance requirements and specifications as provided by this procurement solicitation."

ASC's letter of October 30, 1973, whether regarded as a technical proposal or as a request for waiver of the technical proposal requirement, was considered insufficient, and ASC's proposal was rejected as being not within the competitive range. Award was subsequently made to the second low offeror, Canadian Commercial Corporation, pursuant to a waiver of the technical proposal requirement.

You first contend that the letter contained information which entitled ASC to a waiver of the technical proposal requirement and to participation in the negotiations leading to award.

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Paragraph (h) of the clause entitled PROPOSAL TO CONSIST OF SEPARATE PRICING PROPOSAL AND SEPARATE TECHNICAL PROPOSAL, quoted above, sets forth two bases for waiver of the requirement for submission of a technical proposal. First, the requirement "may be waived for [a] source whose business name combined with his part/drawing/specification number or reference is used in the item description to identify the item required." (Emphasis added.)

You contend in your letter of August 1, 1973, that ASC's proposal cover letter dated October 30, 1972, quoted above, satisfied this requirement. We do not agree. The item required was described in the Schedule of the instant RFP as "FREQUENCY MULTIPLIER OSCILLATOR: COLLINS DRAWING NO. 549-3383-004 Rev. E." We believe it is clear that Collins Radio Company was the only potential source satisfying the first basis for waiver set forth in the RFP.

Paragraph (h) further provided that the requirement for a technical proposal "may be waived for other sources who as determined by the Government have previously satisfactorily manufactured or furnished the items required \* \* \*" (Emphasis added.) You maintain that this criteria for waiver was met by ASC because at the time for proposal submission, it had been awarded a contract for the AN/SRC-20A transceiver, of which the frequency multiplier oscillator is a component.

The procuring agency has rejected this contention for two reasons. First, it does not regard a contract for the AN/SRC-20A transceiver as equivalent to a contract for "the item required," i.e., a frequency multiplier oscillator which is a component of the AN/SRC-20A. Second, the procuring agency is of the opinion that ASC's proposal did not demonstrate that it had previously satisfactorily manufactured or furnished the item being procured.

We need not discuss the propriety of the first of these reasons because there is adequate support for the second. It appears from the record that at the time of proposal submission, ASC had been awarded a contract for the supply of AN/SRC-20A equipment. However, the procuring agency observes that the evaluation of proposals and award under the instant procurement occurred approximately 3½ months before ASC was required to obtain first article approval of its AN/SRC-20A equipment and approximately 10 months before ASC was to commence delivery of AN/SRC-20A units to the Government. Therefore,

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at the time of proposal evaluation and award of the instant procurement, there was no approval of ASC as a qualified supplier of AN/SRC-20A equipment. Furthermore, an examination of ASC's proposal and subsequent protest reveals no assertion that, as of the closing date for receipt of proposals, ASC had in fact previously manufactured or furnished the frequency multiplier oscillator.

Apart from the specific bases set forth in the instant RFP for waiver of the technical proposal requirement, we understand you to contend that the Government had in effect already favorably determined ASC's ability to manufacture the frequency multiplier oscillator through the issuance of a positive preaward survey of your firm in connection with contract N00039-72-C-0292 for the entire AN/SRC-20A system.

However, we have been advised that the AN/SRC-20A system procurement was formally advertised; that consonant with that method of procurement the survey was concerned with general aspects of ASC's responsibility; and that ASC's ability to satisfactorily manufacture the frequency multiplier oscillator was not specifically discussed. In view thereof, we do not think the favorable preaward survey on the prior procurement relieved ASC of responsibility for complying with the technical proposal requirement of the instant RFP.

Since ASC neither submitted a technical proposal as required by the solicitation nor was eligible for waiver of that requirement, we do not regard as arbitrary the procuring activity's determination that ASC's proposal was not within the competitive range. Accordingly, the protest is denied.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General  
of the United States