

109536

DECISION



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

10352

FILE: B-193832

DATE: June 4, 1979

MATTER OF: Gibraltar Industries, Inc.

DIGEST:

1. RFP statement ("FOR INFORMATION ONLY: GOVERNMENT WILL NOT BE RESPONSIBLE FOR ANY COST IN PREPARATION OF THESE PROPOSALS") reasonably disclosed that intent of RFP was to obtain information and in circumstances there is no legal basis for GAO to object to no award being made under RFP.
2. There would have been no doubt of intention to use solicitation for informational purposes if there had been adherence to FPR § 1-1.314 requirement that solicitation clearly state its purpose, explaining that Government does not intend to award contract or if Standard Form 18, Request for Quotations, had been used.
3. Contracting activity was remiss in viewing protest only as inquiry because it was stated in question form, since context of letter was that protest was being made.
4. Delivery of 25,000 yards of material in 30 days does not appear unjustified where agency was in process of manufacturing pajamas and had estimated need of 18,866 yards of material with only 850 yards in stock.
5. Solicitation is not unduly restrictive simply because particular offeror is unable to comply.

Gibraltar Industries, Inc., protested that Federal Prison Industries, Inc. (FPI), did not make an award to it for type 450 Nomex finished fabric under request for proposals No. RFP-TD-0039-9 and made an award instead to Putnam Mills Corp. under RFP-TD-0046-9 on a more restricted delivery basis.

Gibraltar contends that it was the low, responsive offeror for a part of the 1,250,000 yards included in RFP-TD-0039-9 and that it should have received an award for that part. It protests the award for 325,000 yards of material under RFP-TD-0046-9 on the basis it should have received an award for that quantity under RFP-TD-0039-9. FPI, on the other hand, has responded that the latter RFP was issued to obtain information for FPI and the RFP in that regard stated on the cover page: "FOR INFORMATION ONLY: GOVERNMENT WILL NOT BE RESPONSIBLE FOR ANY COST IN PREPARATION OF THESE PROPOSALS."

Because of the use of the colon following "FOR INFORMATION ONLY," the quoted statement might be read to mean that the fact that offerors would not be reimbursed for proposal preparation costs was the information being conveyed. However, since there was no reason to use the words "FOR INFORMATION ONLY" unless to indicate that the proposals were being solicited for information only, proposal preparation costs not generally being reimburseable on a procurement where an award is envisioned, the statement reasonably disclosed that the intent of the RFP was to obtain information. Therefore, we are unable to disagree with FPI that the purpose of RFP-TD-0039-9 was to obtain information. In the circumstances, there is no legal basis for our Office to object to no award being made under the other RFP.

Although we conclude that the statement reasonably disclosed that the purpose was to obtain information, there would have been no doubt of the intention if Federal Procurement Regulations (FPR) § 1-1.314 (1964 ed. amend. 94) had been strictly adhered to. FPR § 1-1.314, in addition to providing for a statement that the Government does not intend to pay for the information solicited, states that a request for informational purposes "shall clearly state its purpose, explaining that the Government does not intend to award a contract on the basis of the request." Also, FPR § 1-16.201-3 (1964 ed. amend. 286) provides for the use of Standard Form 10, Request for Quotations, to obtain price information for planning purposes in either negotiated or advertised procurements.

As to RFP-TD-0046-9, it provided for a series of deliveries beginning with January 1979 and continuing through August 1979. Gibraltar protested the January

delivery requirement on the basis that it called for an initial 30-day delivery when RFP-TD-0039-9 had provided for an initial delivery of 210 days. FPI made the award despite the protest because it believed "the letter from Gibraltar was not a protest action, but rather an inquiry as to why the delivery time frame was reduced."

FPI was remiss in viewing the protest only as an inquiry because it was stated in question form. The letter in which the question was stated was addressed to our Bid Protest Control Unit. It stated "We hereby protest the way in which solicitation # RP-TD-0039-9 * * * has been handled by Federal Prison Industries." Although it did not identify RFP-TD-0046-9 by number, it went on to indicate that it considered that solicitation a continuation of the former.

Turning to the need for the 30-day delivery, that was for 25,000 yards of yellow Nomex. The material is used to manufacture pajamas for the Veterans Administration (VA). FPI has indicated that it was in the process of manufacturing pajamas for the VA and as of January 1 had an estimated need for 18,866 yards of yellow Nomex with only 850 yards in stock. In the circumstances, the delivery requirement appears to have been justified.

However, the record is silent as to whether there was any support for the additional requirement of 25,000 yards of yellow Nomex, 75,000 yards of blue Nomex or anything more than 20,000 yards of green Nomex in RFP-TD-0046-9. Unless FPI had orders to support these requirements or authorization under the procedures provided in FPI inventory accounting standards, the order of these quantities would appear to be inappropriate. In that regard, the inventory accounting standards state:

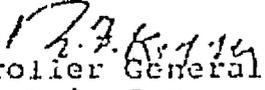
"Special Authorizations (FPI Form 27) are not required for the procurement of raw material and supplies for production when a work order, a firm commitment, or a GSA Stock Requirement Program is on hand. In all other cases a Special Authorization is required to establish a stock program either for finished goods or components."

Gibraltar also protested a third solicitation, RFP-TD-0049-9, for the procurement of 304,000 yards of Nomex fabric on the basis that the delivery schedule was restrictive. As a result of the protest, FPI reviewed its actual needs and based on those needs revised the schedule to provide longer leadtimes for part of the material. However, Gibraltar indicated that it chose not to submit an offer because it would only be able to meet the last increments and it did not believe that it could be competitive on that basis. Gibraltar's position is that only the prior supplier of the material is able to make a competitive offer.

A solicitation is not unduly restrictive simply because a particular offeror is unable to comply. B-156475, June 23, 1965. Therefore, although the delivery schedule may have eliminated Gibraltar from competition, we would not be justified in holding the solicitation unduly restrictive where it represents FPI's needs.

Accordingly, the protests are denied.

However, the delivery schedules in the FPI solicitations may in part be due to the fact that FPI does not anticipate its needs far enough in advance to provide longer leadtimes. Since FPI manufactures pajamas for the VA on a regular basis, we are suggesting in a separate letter of today to the Commissioner of FPI that FPI coordinate its activities with the VA with a view toward attempting to arrive at an estimate of its needs, the approval thereof and the issuance of a solicitation therefor well in advance of the expected delivery in order that more competition may be obtained with the attendant advantages thereof. We are also bringing to the attention of FPI the deficiencies noted above.


Deputy Comptroller General
of the United States