

DECISION

24459
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-205700.2**DATE:** March 9, 1983**MATTER OF:** International Logistics Group, Ltd.**DIGEST:**

Cancellation of invitation for bids which called for specific Chrysler Corporation automatic transmissions is proper where specified transmissions were no longer available and where award could not be made under invitation as issued.

International Logistics Group, Ltd. (ILG), protests the cancellation of invitation for bids (IFB) No. DAAE07-81-B-5547, issued by the United States Army Tank-Automotive Command (Army) for 673 Chrysler Corporation "4x4" hydraulic transmissions, P/N4086336, and 212 Chrysler "4x2" hydraulic transmissions, P/N3898864, for use in the "M880-series" vehicle. ILG insists that it should have received award under the canceled IFB.

We deny the protest.

Clause C03, "Acquisition of Manufacturer's Part Number," of the canceled IFB specified that competition was "restricted to the item description set forth in the schedule which specifies a manufacturer's part number," since "complete Government data for the item are not available."

ILG's low bid for all the transmissions took no exception to the requirement for the specified Chrysler transmissions. The only other bidder, Chrysler, notified the Army after bid opening that it had bid on only eight of the 885 required transmissions because the number bid "represented its total inventory stock * * * and [since Chrysler] was no longer in production on either of the specified transmissions."

Notwithstanding that ILG's bid did not take exception to the requirement for the Chrysler transmissions, the Army learned from ILG after bid opening that the company "was not

024816

offering the Chrysler transmissions from inventory as had been assumed," but that "ILG was modifying Chrysler transmissions, which had been manufactured, according to ILG, for International Harvester Company's 'Scout' vehicle into a configuration * * * equivalent [to] Chrysler's." ILG has referred to the transmissions it proposed to offer under this IFB as "ILG assembled 'Chrysler' transmissions in lieu of Chrysler P/N 4086336 and 3898864."

Initially, Army thought the course of action to follow, given these circumstances, was to reject ILG's bid and award a contract for eight transmissions to Chrysler. Therefore, Army awarded to Chrysler, thereby prompting a protest from ILG that it was entitled to award. Army then reversed its position on the propriety of an award to Chrysler and "canceled" the Chrysler contract. In describing the reason for the cancellation of the Chrysler contract, the Army's report notes only that ILG's low bid "appeared to be responsive on its face."

The Army then conducted a preaward survey of ILG--apparently to consider the possibility of an award. Incident to this survey, various Army technical offices were asked their opinions "regarding the acceptability of the 'Scout' transmissions as modified." The Army reports the results of these reviews as follows:

"The Commercial Vehicle Branch replied that the modified transmissions could not be considered acceptable unless they were 100% hydraulic tested, and one of each type transmission was functionally tested in a vehicle. The Light Tactical Vehicle stated that some of the parts ILG was using in the modification were not in the original configuration of the required Chrysler P/N's 4086336 and 3898864, and that they would require a bill of material for the IHC transmission and a list of replacement parts for such transmission, as well as assurance that the proposed transmissions would fit and function properly in the M880 vehicle and could be supported with the existing Government Maintenance Manuals. The Support Vehicle

Function Branch replied that drawings were not available to the Government on any of the Chrysler transmissions involved and that they could not recommend acceptance of modified transmissions of the type proposed by ILG without assurance that such transmissions were suited for performance in the M880 vehicle. Such assurance would require an in depth engineering analysis to determine performance parameters and interchangeability with the Government specified transmissions."

After the contracting officer obtained these technical views and the results of the preaward survey (which recommended that no award be made to ILG), he canceled the solicitation on the theory that the "IFB as issued was inadequate because it did not provide for testing or documentation of components and suitability for use."

The Army reports that ILG was first informed of the decision to cancel on February 29, 1982. Given this date, the Army argues that ILG's protest, which was filed with our Office on March 16, is untimely. ILG, however, says it filed an oral protest with the Army on January 29. The Army has not contested ILG's statement. The Army then denied ILG's January 29 protest by letter dated February 26. We do not know when ILG received the Army's February 26 letter, but allowing a reasonable time for delivery of the letter (See Halifax Engineering, Inc., B-209822, December 15, 1982, 82-2 CPD 537), we consider ILG's protest to our Office timely since it was received only 12 working days after the date of Army's letter.

From the above, it seems clear that the Army issued the IFB under an erroneous assumption--that the specified Chrysler transmissions were available in the required quantity either directly from Chrysler or from any supplier which had obtained the transmissions directly from Chrysler or from a manufacturer authorized by Chrysler to make and sell the specified transmissions. Also, it is clear from ILG's protest correspondence that the company erroneously felt that it could represent its transmissions as being the specified transmissions--as one would infer from the face of

ILG's bid--even though there is no indication in the record that ILG has received Chrysler's approval to so represent the transmissions. In fact, there is, in our record, a February 10, 1982, letter--from Chrysler to the Army--which conveys a contrary indication.

In Chrysler's letter, a Chrysler representative states that ILG's "proposed modification" of Scout vehicle transmissions will not make the modified transmissions into the specified Chrysler transmissions. Regardless of the technical accuracy of the Chrysler representative's statement, this letter seems to indicate, at a minimum, that ILG was not authorized by Chrysler to represent its ILG-assembled transmissions as the Chrysler transmissions sought under the IFB. Therefore, it seems clear that ILG was actually intending to supply transmissions purportedly equal to the Chrysler transmissions in every respect rather than the specified Chrysler transmissions.

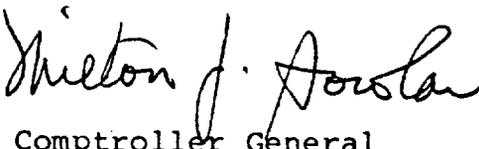
In any event, given that the specifications were based on an erroneous assumption--namely, the availability of the specified Chrysler transmissions--we consider that the Army was entitled to cancel the solicitation. In light of the erroneous assumption, the specifications were obviously inadequate. As stated in Defense Acquisition Regulation § 2-404.1(b) (Defense Acquisition Circular No. 76-17, September 1, 1978): "IFBs may be canceled after bid opening * * * when * * * inadequate * * * specifications were cited." We recognize, however, that award may be made under a defective IFB if award under the IFB, as issued, would serve the actual needs of the Government and would not prejudice other bidders. See Seaward International, Inc., B-199049, January 16, 1981, 81-1 CPD 23.

The Army, as noted above, insisted that award to ILG under the IFB, as issued, simply would not meet the Army's requirements given the need for further data and analysis on ILG's "assembled" transmissions. In reply, ILG points to a related Chrysler transmissions contract, which was awarded before either the Army or ILG knew that Chrysler was out of production on the specified transmissions. Ultimately,

says ILG, the Army agreed to accept 75 ILG-assembled transmissions under a contract modification. The contract modification allegedly provides that ILG "will furnish documentary evidence to the Army showing [that] component part numbers of the [assembled] transmission * * * are the same as [the specified Chrysler parts]" and that ILG will give a 1-year warranty on its assembled transmissions. ILG argues that these alleged circumstances demonstrate that an award to ILG would meet the Army's needs.

Even if we assume that ILG's assertions demonstrate the acceptability of its transmissions, the fact remains that the canceled IFB did not contain the data and warranty requirements which were allegedly negotiated into the related contract in order to assure the acceptability of the transmissions. Consequently, award under the canceled IFB, as issued, to ILG would not meet the Government's needs.

We deny the protest and the related claim for bid preparation expenses.

for 
Comptroller General
of the United States