

DECISION



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

FILE: B-218339 **DATE:** July 9, 1985
MATTER OF: Introl Corp.

DIGEST:

1. Agency may not solicit quotations on one basis and then award a contract on a different basis.
2. Recovery of quotation preparation costs may be allowed where the contracting agency unreasonably excluded the protester from the procurement, and other remedies are not appropriate. Recovery of costs of filing and pursuing the protest, including attorney's fees, may also be allowed where the agency unreasonably excluded the protester from the procurement and GAO does not recommend that the protester be awarded the contract.

Introl Corp. (Introl) protests the award of a contract to Unitron, Inc. by the Naval Regional Contracting Center in Long Beach, California under request for quotations (RFQ) No. N00123-85-Q-7005, for the purchase of a high frequency converter generator. The generator was to provide the power necessary to run the Sealite Beam Director at the White Sands Missile Test Station. Introl asserts that Unitron's bid was neither responsive to the solicitation nor low, and that its own bid, on the other hand, was fully responsive and offered the lowest price.

We sustain the protest.

Nine bidders submitted quotations for the equipment by the closing date for receipt of quotations. Of the nine quotations, Unitron's offer, while not low, offered equipment which included features which the Navy liked but which were not required by the RFQ. In their evaluation memorandum, Navy personnel described these features and concluded that "the unit manufactured by Unitron is clearly the unit required." According to the Navy report, the buyer who received this memorandum along with the evaluated quotations mistook the features which were unique to Unitron's equipment for RFQ requirements. The buyer then

rejected Intral's low quotation for failure to include these features, and placed a purchase order with Unitron as the low responsive quoter. The Navy now states that the proper response to this situation would have been to issue a revised RFQ incorporating the new requirements.

The purchase order was placed on February 27, 1985. When the Navy advised Intral on March 8 that the order had been placed with Unitron, Intral protested to the Navy and to our Office.

Since Unitron had shipped the equipment prior to the agency's discovery of the error, the Navy reports that it has taken the only practical remedial action by explaining the applicable contract principles to the buyer responsible for this error. In effect, the Navy argues that it has done all that it can under the circumstances, and urges that the protest be dismissed.

An agency may not solicit quotations on one basis and then make award on another basis. Le Prix Electrical Distributors, Ltd., B-212078, Nov. 15, 1983, 83-2 CPD ¶ 562. Where there is a material discrepancy between the specifications in a solicitation and the agency's actual needs, the agency should revise its solicitation to provide offerors with the most accurate information available. Id. By its own admission, the Navy should have amended the RFQ and solicited new quotations when it determined that the RFQ did not adequately represent its minimum needs. The agency's failure to do so effectively denied Intral an equal opportunity to compete. See Uni-Tek Mfg. Co., B-208324, Nov. 29, 1982, 82-2 CPD ¶ 483.

Although it is apparent from the record that the contract was improperly awarded to Unitron, it is impracticable for our Office to recommend corrective action now that the equipment has been delivered. We sustain the protest, however, and are by separate letter bringing this matter to the attention of the Secretary of the Navy, in order to prevent a recurrence of a similar procurement impropriety in the future.

The protester has submitted a claim for quotation preparation costs, costs of filing and pursuing the protest, and anticipated profits.

Our Bid Protest Regulations, implementing the Competition in Contracting Act, Pub. L. No. 98-369, § 2741(a), 98 Stat. 1175, 1199 (1984), provide that the

costs of filing and pursuing a protest, including attorney's fees, may be recovered where the contracting agency has unreasonably excluded the protester from the procurement, except where we recommend that the contract be awarded to the protester and the protester receives the award. The recovery of bid or proposal preparation costs may be allowed where the protester has been unreasonably excluded and where other remedies enumerated in our regulations are not appropriate. See 4 C.F.R. § 21.6(d)-(e) (1985).

Although Introl's quotation was responsive and low, the Navy rejected it in favor of a quote which did not meet the specifications but which offered features the agency liked. By improperly departing from the provisions of the RFQ, the Navy unreasonably excluded the protester, who as the low quoter clearly had a substantial chance of receiving the award, from any chance of receiving the award. We therefore find that as no other corrective action is appropriate here, the firm may be allowed recovery of its quotation preparation costs. See Computer Data Systems, Inc., B-218266, May 31, 1985, 85-1 CPD ¶ 624. We also find that Introl should be allowed to recover its costs of filing and pursuing the protest, since, given the circumstances of this case, we have not recommended award to Introl. Introl should submit an accounting of its costs to the Navy, and the protester and procuring agency should attempt to reach agreement on the amount of the costs. If they cannot reach agreement within a reasonable time, our Office will determine the amount. 4 C.F.R. § 21.6(f).

Regarding Introl's claim for loss of profits, our Office has recognized the general rule that anticipated profits may not be recovered even in the presence of wrongful government action. See Effective Learning, Inc.--Request for Review of Prior Claim Decision, B-215505, Feb. 19, 1985, 85-1 CPD ¶ 207. Our Office has no authority to award such costs.

The protest is sustained; the protester is entitled to the costs of quotation preparation and of filing and pursuing the protest.

Milton J. Fowler
for Comptroller General
of the United States