

RELEASED

B-118710-O.M.

JUN 1 - 1967

Mr. Hyman L. Erieger - Regional Manager  
Los Angeles, California

Mr. Robert F. Keller - General Counsel

Preliminary review of procurement and contract  
administration procedures - B-118710-O.M. (61504)

This is in reply to your memorandum dated March 10, 1967, as to whether adequate price competition existed in the pricing of negotiated contract No. N104-11716A between Harris Industries, Incorporated, and the United States Navy Ship Parts Control Center, Mechanicsburg, Pennsylvania.

Title 10, United States Code, Section 2306(f) provides that a contractor shall be required to submit cost or pricing data prior to the award of a negotiated contract where the price is expected to exceed \$100,000 except that this requirement need not be applied where the price negotiated is based on "adequate price competition." ASPR 3-807.3 provides that data "shall not be requested when there is adequate price competition."

In implementing the statute ASPR 3-807.1(b)(1) provides the contracting officer with three separate standards for evaluation of the "adequate price competition" exception.

Subsection (1)a. covers the existence of any price competition and points out that whether there is price competition for a given procurement is a matter of judgment. As expressed in your memorandum, there must be at least two responsible offerors, whose bids are responsive, who satisfy the Government's requirements, and are independently in contention for award on the basis of the lowest price. Based upon the facts stated in your memorandum, and upon the facts contained in the accompanying record, it appears that all of these conditions were met. There is a question under Subsection (1)a(ii) whether there must be two offerors who individually can satisfy the purchaser's total quantitative purchase requirement or whether the second of these offerors may be a composite of several offerors who in combination can compete with the first offeror. We think the contracting officer could reasonably have concluded that the ASPR provision may be satisfied by a combination of offerors.

B-118710-0.M.

COMPARISON  
Negotiation  
Competition  
Adequate

Subsection (1)b. states that if the above conditions are met price competition may be presumed to be adequate unless any of three limiting factors is found to be present. The second of these three factors, also mentioned in your memorandum, requires a determination whether the low offerer has such a determinative advantage over other competitors that he is practically immune to the stimulus of competition. While it appears that any substantial start-up costs experienced by Harris would have been absorbed under their previous contract, it is suggested that since the Government planned to provide, at no cost, some required special tooling and facilities, the start-up costs or nonrecurring expenses may not have been significant in the proposed prices of any of the firms interested in the procurement. Presumably, therefore, Harris did not have a determinative advantage. The third of these factors deals with the reasonableness of the price. We find no basis to conclude that the price was unreasonable.

Subsection (1)c. states that a price is based on adequate price competition if it results directly from such competition or if price analysis (not cost analysis) "shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same item procured in comparable quantities under contracts awarded as a result of adequate price competition." As already indicated, we do not believe a substantial basis has been presented for questioning the existence of adequate price competition. In addition, we think that the price may be said to be reasonable on the basis of the price analysis described.

The Harris price on a previous formally advertised contract for approximately 500,000 units, although higher than the unit price under the contract, was lower than any of the other proposals in response to the instant procurement. While the quantity procured under the earlier procurement was much smaller than the current procurements, we believe it is not unreasonable to conclude that once a given quantity is reached no appreciable price reduction can be expected for substantially larger quantities.

In view of the foregoing, we believe that in this case the contracting officer reasonably exercised the discretion granted him in not requiring the submission of cost or pricing data.