



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

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B-177654

JUN 26 1973

Murtha, Cullina, Richter and
Pinney
Post Office Box 3197
Hartford, Connecticut 06103

Attention: John C. Yavis, Jr., Esquire

Gentlemen:

This is in further reply to your letter of May 7, 1973, requesting that we "withdraw" our letter of May 4, 1973, in which we declined to consider the protest filed on behalf of National Eastern Corporation under RFP DAAA25-73-R-0016, issued by the U.S. Army Munitions Command, Frankford Arsenal, Philadelphia, Pennsylvania, because it was not finally filed.

The solicitation, for a quantity of M103 brass cartridge cases, was issued on October 10, 1972, with a closing date for receipt of proposals of October 31, 1972. The closing date was subsequently extended to November 15, 1972, by an amendment to the RFP. By teletype dated November 30, 1972, offerors were advised of certain evaluation factors and of the opening of negotiations. The message also requested best and final offers by December 15, 1972.

Section D-1 of the original RFP contained a provision dealing with costs of production at a Government-owned, contractor operated (GOCO) plant. That provision stated:

Prices submitted will be compared for reasonableness with GOCO out-of-pocket costs. Evaluation factors will include first article, discounts, escalation (material/labor), transportation (GFM inbound), abnormal maintenance at GOCO plant, support services, annual maintenance of facilities laid away or to be laid away as a result of the affected procurement, and overhead redistribution at GOCO plants.

The November 30th message informed offerors that GOCO escalation factors of 2.7 percent for material and 5.5 percent for labor would be used in the evaluation of proposals. The message also established dollar amounts for maintenance of laid away facilities and for overhead redistribution, and provided that those amounts would be added to commercial offerors' prices.

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In your protest letter dated December 13, 1972, you took exception to the use of the 2.7 percent escalation factor, claiming that a 10 percent factor was the lowest realistic figure in view of the current market situation. You also objected to the addition of overhead costs to commercial price proposals. You further protested "what is in effect the competition of fixed price proposals with the estimated and incomplete costs of the GOCO plant." In addition, you protested any award "to a private contractor which intends to use Government-owned equipment, unless the private contractor is assessed and pays a reasonable rental charge for each item of such equipment which it uses to perform the resulting contract."

Your protest letter, which was mailed, was received by us on December 18, 1972, and therefore, we concluded that the protest was untimely filed. You point out, however, that a copy of your December 13 letter was also hand-carried to our Office on December 15, 1972. Accordingly, we agree with you that, to the extent your protest is based on information provided by the contracting officer's November 30, 1972 message, the protest should not be considered untimely. However, in the meantime, the Army awarded a contract to the Amron Corporation, a private firm. Since an award was made to a commercial offeror and not to a GOCO plant, it does not appear that National Eastern was prejudiced by use of the evaluation factors to which you have objected. Accordingly, it would not be appropriate for us to consider, in the context of this bid protest, the merits of your contentions regarding cost comparison between a GOCO plant and commercial offerors.

With regard to the use of Government equipment by a private contractor, we note that section C-10 of the RFP cautioned offerors that a rental agreement was required if such equipment was to be used. The contracting officer has reported that appropriate rental charges would have been included in the evaluation of any commercial proposals calling for the use of Government equipment, and that even if the rental charge was later waived, the contract would list the specific Government-owned property for which rent-free was authorized.

Sincerely yours,

Paul G. Dembling

Acting Comptroller General
of the United States