



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

B-177894

April 17, 1973

30805

Silent Hoist and Crane Company, Inc.
841-877 63rd Street
Brooklyn, New York 11220

Attention: Mr. R. E. Cohen
Manager, Government Sales

Gentlemen:

We refer to your letter dated January 24, 1973, and subsequent correspondence, [protesting the procedures for soliciting bids] under IFBs DACW35-73-B-0020 and -0030, issued by the Army Engineer District, Detroit, Michigan.

Department of the Army: Army Engineer District
Invitation for Bids DACW35-73-B-0020 (IFB -0020) was issued on November 13, 1972, for the supply of one 10,000-pound capacity fork lift truck. The following bids were recorded at the bid opening on December 8, 1972:

Modern Handling Equip. Co.	\$11,472.00
Towmotor Corp.	11,783.00
Clark Equip. Co.	12,985.00
Otis Material Handling	13,800.00
Advance Fork Lift Co.	14,543.75
Silent Hoist & Crane	16,545.91

Detroit, MI 88

The fork lift truck to be procured under IFB -0020 was to replace one which was in need of extensive repairs and was being maintained in operating condition on a day-to-day basis. In view thereof, section H-1 of IFB -0020 required delivery of the truck within 30 days after receipt of contract. None of the bidders objected to the technical specifications for the item being procured. However, all bidders other than Silent Hoist were nonresponsive in that they took exception to the required delivery schedule.

Thus, the sole responsive and responsible bid received was approximately 45 percent greater than the apparent low bid and almost 40 percent above the price of \$12,000 which was anticipated

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by the procuring activity when it issued IFB -0020. The contracting officer therefore determined that Silent Hoist's bid was unreasonably high. It was also determined that the short delivery period, although desirable, was not critical, and in view of the presence of five lower bids, it was considered in the Government's best interest to cancel IFB -0020 and readvertise the requirement with a longer delivery schedule.

IFB -0020 was canceled and the requirement was readvertised by the issuance of IFB DACW35-73-B-0030 (IFB -0030) on January 12, 1973. The only respect in which IFB -0030 differed from its predecessor was that the delivery schedule was lengthened to 90 days. The following bids were received under IFB -0030:

Modern Handling Equip. Co.	\$11,472.00
Towmotor Corp.	12,306.00
Otis Material Handling	12,630.00
Clark Equip. Co.	12,785.00
Eaton Corp.	13,900.00
Advance Fork Lift Co.	14,572.25

Upon receipt of the procuring activity's denial of your protest against the cancellation of IFB -0020, you protested to our Office. Award under IFB -0030 has been withheld pending our decision.

Your initial bases for protest are that certain requirements of the technical specification in IFBs -0020 and -0030 were either "design restrictive" or exceeded the Government's minimum needs. In regard to the first basis, it was administratively reported:

Five different proprietary machines were offered under each invitation. Four were common to both invitations and Silent Hoist bid on the first but not on the second invitation. Eaton Corporation did not bid on the first but did on the second invitation. It is apparent that altogether on both invitations with identical technical specifications, six different machines meeting those specifications were offered. It is only fair and reasonable to assume that a given set of technical requirements that can be met by six different manufacturers who build six different machines are not restrictive nor do they limit competition.

In cases of this nature the question to be decided is whether the specifications unduly restrict competition. It is apparent that the specifications in the instant case gave bidders sufficient latitude to permit competition by six different manufacturers. Absent

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evidence that the agency's needs could have been met by a less demanding specification, we see no legal basis on which we would be warranted in finding that the specifications are unduly restrictive of competition.

In response to your allegation that certain specification requirements exceeded the Government's minimum needs, the contracting officer has stated:

Specifications were provided by the using element and were based upon safety, operating experience and needs, current maintenance records, and the physical character of the structures where the equipment will be used. * * *

This statement was further explained in a supplemental administrative report, which was furnished you but upon which you declined to comment.

The responsibility for drafting specifications which reflect the minimum needs of the Government is primarily that of the contracting agency. 17 Comp. Gen. 554 (1938). In the absence of evidence clearly indicating that the specifications as written do not reflect the minimum needs of the procuring activity or that they are otherwise contrary to applicable law or regulation, our Office may not properly object thereto.

You also contend that it was improper for the contracting officer to have determined the reasonableness of your price through a comparison with nonresponsive bids; that award under IFB -0020 should have been made to you as the lowest responsive and responsible bidder; and that the cancellation of IFB -0020 and issuance of IFB -0030 constituted an auction. These arguments, as well as the factual situation from which they arise, bear an extraordinary similarity to those of our decision B-173334, August 19, 1971, copy enclosed, in which you were the protestant. Under the authorities set forth in that decision, which are equally applicable to this protest, and based upon our review of the present record, we do not find that your contentions present an adequate basis for this Office to object to the cancellation of IFB -0020 and the issuance of IFB -0030.

Accordingly, your protest is denied.

Sincerely yours,

PAUL G. DEMBLING

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For the Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

30406

B-176060
B-177845

April 17, 1973

Illinois Central Railroad Company
6327 Dorchester Avenue
Chicago, Illinois 60637

Gentlemen:

Reference is made to your claims under freight bills AR-85059, AR-85060, and AR-85062 for additional freight charges of \$176 on each of three shipments of army tractor tanks which were tendered to the rail carriers on February 9, 1967, at the Letterkenny Army Depot, Culbertson, Pennsylvania, and from there transported to Fort Knox, Kentucky, where they were delivered during February 1967. The additional amounts claimed represent the differences between the freight charges of \$352 originally billed and paid during May 1967 to your company for the transportation services rendered on each shipment, computed at the balance of the through rate published from Patterson, New Jersey, to Fort Knox, Kentucky, which applies on certain shipments accorded transit privileges at Culbertson, and the higher charges now claimed based on the local rate applying from the transit point to destination because the transit privilege did not apply via the routing designated on the bills of lading.

Since the transit basis of charges does not apply on any of the three outbound shipments, payment of the additional amounts claimed turns on the question of whether such claims were timely filed with the General Accounting Office. Your claims for the additional charges of \$176 on each of the shipments were first received in our Office on February 9 and July 27, 1971 (two were received on the latter date).

The claim papers were returned to your company by our Transportation and Claims Division with the explanation that Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66, prevented their consideration because the claims were not received in our Office within the 3-year period of limitations specified in such provision of law and thereunder are forever barred. In view of the action taken by our Transportation and Claims Division, your reclaims for the \$176 on each of the shipments are being considered as requests for review of the final actions of the Transportation and Claims Division which in effect refused payment of such claims.

PUBLISHED DECISION
52 Comp. Gen. _____

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