

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

79-2 CPD 287

645

DIGEST - L - Cont

FILE: B-195376

DATE: October 24, 1979

MATTER OF: Aerol Company

DIGEST:

1. Where it is evident that for purpose of immediate IFB "source control drawing" is not intended to restrict procurement to approved source, provisions of MIL-STD-100, which pertain to "source control drawings," are not considered to apply.
2. Fact that company incurred expenses to become approved source does not provide basis in law for negotiating with it on sole-source basis.
3. Bid containing handwritten note susceptible to more than one interpretation is ambiguous and must be rejected as nonresponsive.

Aerol Co., Inc. (Aerol), protests the proposed award by the Navy Aviation Supply Office of a contract for the purchase of towbar wheels under invitation for bids (IFB) N00383-79-B-0395.

Essentially, Aerol protests a competitive solicitation because it is the only firm listed as an approved source on "source control drawing" 62A122C6 referenced in the solicitation and it is unfair for the Navy to make an award to any firm that has not incurred the expense it did to become approved. Further, it disagrees with the Navy that its bid should be rejected.

The Aerol protest is denied for the reasons stated below.

First, it is clear from the IFB as amended that even though a "source control drawing" is being used to procure the towbar wheels, the drawing is only

used for the specifications of the item. That it is not intended to be restricted to the approved source is manifested by amendment 0002 which states:

"Notwithstanding the fact that only one supplier is listed on drawing 62A122C6, any offeror may submit a bid in response to this solicitation and, other than the already approved source, may become an approved source * * * by successfully passing the First Article Approval Test (see Clause F-651) under the terms of any contract subsequently awarded to such offer."

While the specifications are broadly labeled as a "source control drawing," it is evident that for the purpose of the immediate IFB it is not being used in that way. Where drawings refer to previously approved sources and it is not the intention to be so restrictive, we have recommended that steps be taken to make it clear that the competition is not limited to prior approved sources. A&M Instrument, Inc., B-194554, September 4, 1979, 79-2 CPD _____. Therefore, we do not consider those provisions of MIL-STD-100, which pertain to "source control drawings," to apply.

Second, the fact that Aerol incurred expenses to become an approved source does not provide any basis in law for negotiating with it on a sole-source basis. None of the exceptions to formal advertising provide for negotiating with a firm to the exclusion of all other firms because it has incurred an expense other firms have not. See 10 U.S.C. § 2304(a)(1)-(17) (1976). Further, where a procurement is conducted on an advertised basis, "There is no requirement that factors or handicaps be provided to equalize the competitive advantage enjoyed by a bidder over his competition." See Keuffel & Esser Company, B-190774, April 13, 1978, 78-1 CPD 281.

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Finally, we agree with the Navy that Aerol's bid should be rejected. Aerol's bid contained a handwritten statement in the bid schedule: "Note: Pls. Ref. to Aerol Co. quote #Q0601/9." The Navy considers the Aerol bids to be ambiguous because

the note can either be referring to the unknown terms of an Aerol quotation which was not included with the bid or can be referring to a quotation number to be placed on the award. Aerol responds by affidavit that it was its intention that the quotation number be used as an identification number only. Aerol states that it has followed such procedure in the past without objection. However, the responsiveness of a bid must be determined from the bid itself without reference to a bidder's subsequent explanation of what was intended. Inflated Products Co., Inc., et al., B-185058, August 9, 1976, 76-2 CPD 135. Where a bid is ambiguous on its face, it must be rejected as non-responsive. _____, B-194154, April 6, 1979, 79-1 CPD 243. The fact that awards may have been made to Aerol in the past under similar circumstances is not controlling. Improper awards in the past do not justify repetition of the same error. 36 Comp. Gen. 535, 540 (1957).



For the Comptroller General
of the United States