



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-179075

40267  
December 11, 1973

Gulf & Western Advanced Development & Engineering Center  
Gulf & Western Manufacturing Company  
101 Chester Road  
Swarthmore, Pennsylvania 19081

Attention: Mr. John J. Byrne  
Vice President

Gentlemen:

We refer to your letter of September 18, 1973, and prior correspondence, protesting the Federal Railroad Administration (FRA), Department of Transportation, rejection of all bids and resolicitation after final bid opening of a two-step formally advertised procurement solicitation No. DOT-FR-20034. The FRA requirement for "Wheel/Rail Dynamics Simulator Carriage Assemblies, Reaction Structures and Service Structures" was subsequently procured through negotiation, award of the relevant contract being made on June 29, 1973, to The Boeing Company (Boeing).

FRA states that upon opening an examination of the bids received from the two firms declared acceptable in step one of -20034 indicated the following:

Gulf & Western (G&W)	\$3,497,687
Boeing	3,893,450

However, the Government estimate for the contract was only \$2,500,000, making the low bid 40 percent higher than this figure.

FRA thereafter attempted to verify the accuracy of its estimate by, among other things, revalidating quotations from a number of sources on each component and subsystem. After such a procedure was completed the Government estimate was revised to \$2,700,000 because of the discovery of an error which had caused the initial estimate to be understated by \$200,000.

At this point G&W's low bid was still 30 percent higher than the Government estimate. FRA, therefore, sent a letter to G&W dated March 2, 1973, which stated:

[Protest Against Negotiated Contract Award]  
716-3-24

"The subject procurement is hereby converted from a two-step formally advertised procurement to a negotiated procurement by the authority set forth in Subpart 1-3.214 of the Federal Procurement Regulations [FPR]."

FPR sec. 1-3.214, in essence, provides two bases for converting a formally advertised procurement into a negotiated procurement-- prices received after formal advertising were not reasonable, or have not been independently arrived at in open competition.

In view of the above, G&W's protest regarding the conversion of the IFB into a negotiated procurement is untimely since it was not filed within 5 working days after the basis for the protest was known or should have been known to your firm. 4 CFR 20.2(a); B-178308, June 13, 1973. Indeed, G&W's protest on this point was not filed with our Office until July 2, 1973, nearly 4 months thereafter.

Similarly, we find that G&W's further contention regarding FRA's alleged failure to conduct sufficient negotiations is also untimely. Both offerors were advised by a letter dated June 1, 1973, to submit a firm and final offer by the eventually established due date of June 8, 1973. It should have been clear to G&W upon receipt of the June 1 letter that FRA did not intend to conduct any further negotiations and it was therefore incumbent upon G&W to protest at that time.

For the above-noted reasons, we decline to rule on the merits of your protest.

Sincerely yours,

Paul G. Dembling

Paul G. Dembling  
General Counsel