



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

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B-178112

July 24, 1973

Alton Iron Works, Incorporated
Post Office Box 150
Albertson, New York 11507

Attention: Mr. Theodore J. Hoffberg
Treasurer

Gentlemen:

By letter dated February 23, 1973, you protested the rejection of your bid and award of contract to another firm under invitation for bids (IFB) No. N00383-73-B-0113, issued August 11, 1972, by the Navy Aviation Supply Office, Philadelphia, Pennsylvania (ASO).

The IFB called for step ladder quantities of a "Blade Tiedown" to be manufactured in accordance with Boeing-Vertol Drawing A0201054-1, and drawings and specifications listed thereon, including a component part listed as a "Blade Interlock," Nor-Co, Incorporated (Nor-Co), Part Number 1L-97-4. Since ASO did not possess the detailed manufacturing data for the blade interlock it was considered necessary for all bidders to use the Nor-Co part and "in-house" production was not considered acceptable on an "or equal" basis because there was no way for ASO to determine if another firm's blade interlock was equal to Nor-Co's.

Fourteen bids were received and opened on September 12, 1972. Alton Iron Works, Incorporated (Alton), submitted the low bid of \$22.45 per unit and the second low bid was submitted by Kings Point Mfg. Co., Inc., at \$26.97 per unit. By letter dated September 15, 1972, Nor-Co advised the contracting officer that your firm's bid for the entire unit was lower than the price Nor-Co had quoted for the blade interlock alone and that the blade interlock is a "sole-source" component for which detailed drawings had not been released to other firms.



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The contracting officer suspected that Alton made a mistake in its bid and he requested Alton to verify its bid price and to advise whether the end item would be supplied in strict accordance with the Boeing-Vertol drawing. Alton confirmed its bid price and stated by letter dated October 17, 1972, that "the parts will be made strictly in accordance with all the requirements of the Boeing-Vertol Drawing." The contracting officer requested a preaward survey on Alton and received a recommendation of "NO AWARD" from the survey team based upon negative findings with respect to several factors of performance capability. Furthermore, the survey report noted that Alton intended to manufacture the blade interlock "in house" for the stated reason that Nor-Co could not supply the item to Alton in time for it to meet the required delivery schedule. By letter dated January 12, 1973, the contracting officer requested Alton to verify whether it planned to use the Nor-Co blade interlock. Alton replied that the blade interlock would be manufactured by Alton.

By letter dated February 9, 1973, the contracting officer notified Alton that its bid was rejected in accordance with ASPR 2-406.3(e)(2), which allows the rejection of a bid where the bidder fails or refuses to furnish evidence in support of a mistake in bid and the contracting office concludes that acceptance of the bid would be unfair to other bonafide bidders. Award was made to the second low bidder who had advised that it would use the Nor-Co blade interlock.

You contend that award should have been made to your firm since it was the low bidder. Furthermore, you assert that Nor-Co must have offered the successful bidder "some special or collusive incentive to make sure they would underbid anyone else contemplating using Nor-Co's component." You also state that the Navy is in error in its belief that the Nor-Co blade interlock is a sole-source item which cannot be substituted for by another manufacturer's product.

We do not agree with the contracting officer that your bid should have been rejected because of a mistake in bid. Since such determination was based upon the fact (revealed during the preaward survey and admitted by Alton) that Alton did not intend to furnish the specified Nor-Co blade interlock, it is clear that there was no "mistake in bid." Although you took no exception in your bid to any provision of the solicitation, the revelation after bid opening of your intention not to comply with the specifications would clearly support a determination to reject your bid for nonresponsibility pursuant to ASPR 1-903. See 49 Comp. Gen. 553, 556-7 (1970); B-176896, January 19, 1973. In addition, as noted

above, the preaward survey was negative with respect to other factors of responsibility, such as technical ability, production, purchasing, quality assurance, and ability to meet the delivery schedule. Therefore, it is our conclusion that your bid was properly rejected on the basis of a determination, in effect, of nonresponsibility because of your admitted intent not to comply with the requirement for a specified component comprising approximately 90 percent of the end product value. Although you are a small business concern, referral of the matter to the Small Business Administration pursuant to ASPR 1-705.4 was not required because such determination was not based solely upon "capacity" as defined in the regulation.

Although you allege "special or collusive actions" by Nor-Co to favor other bidders, you have not presented any evidence to this Office in support of such allegation. In this regard, Nor-Co advised the contracting officer that it quoted the same price to each bidder. Therefore, there is no basis for our Office to take any action with respect to this charge.

Since the blade interlock is a sole-source item at present, it is reported that the Navy is not in a position to determine the acceptability of your proposed component because of a lack of the necessary design drawings of the Nor-Co component. However, we are advising the Secretary of the Navy of our view that efforts should be made by the Navy and Boeing-Vertol to qualify additional sources for the blade interlock in order to broaden competition in future procurements of the subject end item.

In these circumstances, there is no legal basis for our Office to object to the award and, therefore, your protest is denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States