



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

B-178467

July 9, 1973

31157

Holo-Krome Company
5480 Wisconsin Avenue
Chevy Chase, Maryland 20015

Attention: Mr. H. F. Gonnerman, Jr.
Washington Representative

Gentlemen:

Reference is made to your letter of June 4, 1973, and prior correspondence, protesting the award of a contract to Allen Manufacturing Company (Allen) under solicitation No. FPMH-F4. 55017-A-1-9-73, issued by the General Services Administration (GSA).

The solicitation was issued by the Federal Supply Service on December 18, 1972, and contemplated a requirements contract for 56 items of socket head screw key sets. Two bid samples were requested of each bidder for each item or each listed group of items. Samples and bids were to be evaluated against Federal specification GGG-K-00275b dated June 7, 1968, and interim amendment No. 2 of July 30, 1969. Bids were opened on January 9, 1973, and your firm was low bidder on items 2-10, 14, 17, 13, 20, 21, 23, 25-27 and 29-31 after rejection of the bid of Upland Industries, Inc., on the basis of being nonresponsive.

During evaluation of your bid samples, it was found that certain of them failed to comply with paragraph 3.6 of the specification entitled "Identification marking" which provides in part as follows:

Hexagon keys, L type, sizes 5/16-inch and larger, shall be stamped or engraved in a legible and permanent manner with the size and manufacturer's name or trademark of such known character that the source of manufacturer may be readily determined.

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Following this discovery, a plant facilities survey was conducted and the subsequent report indicated that you would not mark keys above the 3/8-inch size and also that your suppliers of packaging materials could not comply with the recycled material requirements for packaging material in the solicitation. Therefore, your bid was rejected and award was made to Allen.

The bases of your protest are that while it is the commercial practice of Holo-Krome not to mark keys above the 3/8-inch size, no inquiry was made of a responsible official of Holo-Krome as to whether it could be done for this contract and that GSA has waived the recycled packaging requirement in the past and, moreover, the requirement had been made optional rather than mandatory on GSA solicitations several weeks prior to award to Allen.

As regards your first contention, a copy of the plant survey report which was furnished our Office shows that the Sales Office Administrator (the individual who signed the bid), the Quality Control Manager and the Director of Industrial Relations of your firm were interviewed by the Quality Assurance Specialist during the survey. It appears these employees were in positions of sufficient responsibility for the Quality Assurance Specialist to rely on their statements without making further inquiry.

Concerning the requirement for recycled packaging materials, we have been advised by GSA that the requirement has been waived in only one instance which involved a sole supplier. Furthermore, in reference to the change from a mandatory to optional provision, our Office has been informed that this action was taken by Federal Supply Service Procurement Letter No. 45 dated March 9, 1973. The effective date of the change was explained in the following portion of the letter:

3. Revised instructions. Pending revision of GSPR 5A, the provisions set forth in the enclosures to this letter shall be incorporated in all applicable new solicitations (see (a) and (b), below). Solicitations issued but where bid opening has not yet occurred shall be amended to include the new clauses and, where necessary, the bid opening date shall be extended. Solicitations opened and containing the previous clause prescribed in Enclosure No. 1 of the canceled FSS Procurement Letter No. 33 AND where awards have not yet been made shall be processed in accordance with the terms of that clause. Bids not meeting the requirements are

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nonresponsive and awards should be made to the next low responsive bidder, unless it is determined that competition was inadequate to obtain reasonable prices due to use of the clause (FPR 1-2.404-1(b)(7)).

As the bids for the instant solicitation were opened on January 9, 1973, and award was pending at the time of the issuance of the above change, the terms of the recycled packaging clause still applied.

Accordingly, the protest is denied.

Sincerely yours,

PAUL G. DEMBLING

Acting Comptroller General
of the United States