



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

40170

B-179094

November 7, 1973

The Honorable
The Secretary of the Navy

Dear Mr. Secretary:

This is in reply to letter SUP 0228 dated August 16, 1973, from the Deputy Commander, Procurement Management, Naval Supply Systems Command, reporting on the protest of Technology Incorporated (Technology) against the rejection of its bid under invitation for bids N00178-73-B-0175, issued by the Naval Weapons Laboratory (NWL), Dahlgren, Virginia.

The IFB was the second step of a two-step formally advertised procurement for a continuous 16mm motion picture color film processing machine. Two proposals were found to be acceptable under the request for quotations issued as the first step, that of Technology and the Filmline Corporation (Filmline). NWL believed that the funds for this procurement had to be obligated by June 30, 1973, or such funds would be withdrawn. Therefore, the IFB was mailed to the two eligible firms on June 23, 1973, with an opening date of June 29, 1973. On June 25, the contracting officer, aware that the bid package would not reach the bidders in time for them to submit timely bids, called each bidder and authorized telegraphic bids and conveyed the contents of the IFB to each bidder orally.

Bids were received from both Technology and Filmline, with Technology being the low bidder. However, the contracting officer determined that Technology's bid was nonresponsive because the delivery schedule offered did not comply with the requirement in the IFB. Also, the contracting officer noted the possibility of an error in the price submitted for Item 0003AA.

On July 5, 1973, Technology protested to our Office the finding of nonresponsiveness regarding its bid. It contended that the errors in the bid were caused by the inadequate time allowed for bid preparation.

As regards the delivery schedule, the IFB required delivery within 120 days after the date of the contract (ADC). Technology's bid stated that delivery would be made 120 days ARO (after receipt of order). The IFB provided a warning that if a delivery schedule was offered on an ARO basis, it would be evaluated by adding the maximum number of days

[Protest Against Award of Navy Contract]

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B-179094

normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered was later than the delivery date required in the invitation, the bid would be considered nonresponsive and rejected.

According to the record, Technology did not receive the bid package until the day after it sent its telegraphic bid. Filmline, due to its closer proximity to Dahlgren, Virginia (Connecticut as opposed to the California location of Technology), received the bid package prior to the submission of its telegraphic bid.

Also, our Office has been advised informally that the contracting officer did not read the above-mentioned warning to the bidders but only stated that delivery should be made in 120 days. No statement was made regarding ARO v. ADC in the phone conversation.

Based on the above facts, our Office finds that the two successful proposers under the first step were not provided an opportunity to bid on an equal basis in the second step. Technology appears to have been prejudiced due to its distance from the procuring activity and did not have the above-referenced warning regarding the handling of ARO delivery schedules before it at the time of submission.

Therefore, since no award has been made and it is our understanding that upon further examination it has been determined that funds will be available until December 31, 1973, our Office recommends cancellation of the second step and resolicitation of the acceptable proposers under the first step, assuming the requirements of the procuring activity have not changed in the interim.

Due to the above recommendation, the matter of the possibility of a pricing error on item 0003AA is academic and need not be considered.

Sincerely yours,

Paul G. Denbling

For the Comptroller General
of the United States