



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

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August 21, 1973

Amigo Foods Corporation
Row D-434-435-436
New York City Terminal Market
Hunts Point and East Bay Avenues
Bronx, New York 10474

Attention: Mr. Robert L. Krupnick

Gentlemen:

We refer to your letter dated May 17, 1972, and supplemental correspondence, on behalf of the New York Produce Trade Association, protesting against the procurement policies of the Defense Personnel Support Center (DPSC) in connection with the purchase of fresh fruits and vegetables.

Your protest resulted from two procurements for carlot quantities of fresh vegetables, one awarded on May 16, 1972, by the Subsistence Regional Headquarters (SRH), Oakland, DPSC, Defense Supply Agency (DSA), and the other awarded on May 25, 1972, by SRH, New Orleans.

The May 6, 1972, award was for 330 cartons of iceberg lettuce, unwrapped, regular pack, and 550 cartons of iceberg lettuce, celo pack, to be delivered to Bayonne, New Jersey, on May 22, 1972. This procurement was a New York requirement which was forwarded for the purpose of effecting the purchase to the Salinas Seasonal Purchasing Office, a purchasing activity of SRH Oakland, located in the lettuce growing area. On April 21, 1972, Notice-To-Trade No. OAK-14-(72) was furnished to known suppliers soliciting oral offers. Awards under the notice were to be made pursuant to a Blanket Purchase Agreement issued under the negotiating authority of 10 U.S.C. 2304(a)(5). The notice provided that "all interested suppliers are required to notify the procurement agent and acquaint him with the location of packing and loading facilities and furnish full information with regard to anticipated supply of fresh fruit and vegetables available for purchase." The notice also provided that "Procurement of fresh fruits and vegetables shall be based upon the following mandatory specifications in the order listed:

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- a. Federal Specification
- b. Coordinated Military Specification
approved by the Department of Defense
for its use
- c. U. S. Standard for Grade"

The notice further specified that "awards will be made with due regard to quality, condition and other factors" and that "all offers submitted will be F.O.B. destination unless otherwise specified."

We are informed that in accordance with DSA procedures a Government purchasing agent visited the fields identified by the offerors to examine their products. Three of the nine offerors determined to have products of suitable quality and condition submitted prices. The purchasing agent evaluated these offers and made award to Inter-harvest, Incorporated, at \$3.91 a carton for unwrapped lettuce and \$4.81 a carton for wrapped lettuce. A member of your trade association offered prices of \$3.00 a carton for unwrapped lettuce and \$3.75 for wrapped lettuce. This offer, and others from your trade association, were determined to be unacceptable because of the failure of the offerors to comply with the provision of the notice which required disclosure of the location of packing and loading facilities.

Since the basis for your protest and the relevant facts of both procurements are the same, we will limit our consideration to the Oakland procurement. In addition, it should be noted that our audit division has conducted an evaluation of the same DPSC field buying procedures which are the subject of this protest and its findings are included in a report entitled "Policies for Procurement of Fresh Fruits and Vegetables by the Defense Supply Agency," B-176012, B-176131, dated June 25, 1973, to Congressman Mario Biaggi, copy enclosed.

You contend that the requirement for source disclosure before award is arbitrary and unreasonably restricts competition. It is your position that since fresh vegetables (in this case lettuce) are purchased according to specifications at time of delivery, award should be made to the firm offering the lowest priced product which conforms to the specifications, notwithstanding any failure to disclose the origin of the product.

You contend that the source inspection is not necessary because all suppliers are required to meet Federal specifications at the time of

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delivery, which may occur as much as 12 days after the initial inspection. In this regard, you insist that the only operative factor is whether the produce complies at destination with United States Department of Agriculture (USDA) grade classifications and any other applicable specifications. You contend that you and other terminal market vendors (as distinguished from growers) can provide the Government with produce which complies with the specifications if the source inspection procedures are eliminated. In your view, DSA inspection procedures eliminate a large portion of the produce industry (terminal market vendors), who find it difficult to identify their sources without establishing specific growing area affiliations.

DIA insists that identification of the supply source is required in purchases of carlot quantities (source identification is not required when lesser quantities are involved) to enable the purchasing agent to visually inspect the product at the growing area. This inspection is necessary in DSA's opinion for proper evaluation of the offers. We are informed that USDA standards specify the maximum permissible defects that a product may have and still meet the minimum standards for grade. Accordingly, the lowest priced offer may not be the best value because it may be for a product that barely meets the minimum standards.

The requirement to inspect the produce prior to award is based on the assumption that the visual inspection of fresh fruits and vegetables in the fields assures the best value for the Government. It is reported that the latitude in the USDA standards can cause variations in the actual market value of the produce being offered. For example, lettuce is very perishable and begins to deteriorate at time of harvest. We are informed that the degree of deterioration at any point in time after harvest is directly affected by the time lapse from harvest and temperature changes to which the lettuce may be subjected. These factors affect the amount of trim at the time and point of consumption, which makes a difference in the actual market value even though all the lettuce may grade within the tolerances of the USDA standard. DSA insists that without source inspection there is no practical way by which the actual harvest time of a product can be discerned prior to award.

In this connection, it has been brought to our attention that several of the larger chain stores utilize a similar technique in procuring fresh fruit and vegetables. Although they do not actually inspect the produce in the field during each procurement, they have

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employees in the growing area who provide intelligence as to the general conditions of the fields and crop quality.

It is also reported that USDA officials have acknowledged the value of the buyer being informed as to the reputation of growers and packers, as well as to the general condition of the growing areas and crops. On the other hand, they state that their field personnel can inspect to any specification established by the buyer. Therefore, they suggest that DPSC develop tighter specifications and USDA field personnel will inspect to those specifications.

Although you have offered convincing arguments in support of your position that visual inspection of carlot quantities of produce at the growing area is unduly restrictive, we are unable to conclude that DSA's use of this procedure is without justification in view of the fact that the applicable specifications do not appear to be sufficiently stringent to assure the quality produce required. In this connection, by letter of today to the Director of the Defense Supply Agency, we are directing his attention to the recommendation in our audit report of June 25, 1973, that consideration be given to the possibility of drafting more exacting specifications so that the number of items requiring field inspections might be reduced.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States