

DOCUMENT RESUME

03879 - [A2773993]

[Protest against Any Award under Solicitation for Recorder Head Assemblies]. B-189433. September 29, 1977. 4 pp.

Decision re: LIPPS, Inc.; by Robert P. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Air Force: Sacramento Air Logistics Center, McClellan AFB, CA; Pierce Industries, Inc.: DB Div.

Authority: 4 C.F.R. 20.2(b)(1). 56 Comp. Gen. 62. B-188194 (1977). B-180586 (1975). B-180608 (1975). E-188454 (1977).

The protester objected to any award under a request for proposals, contending that an offeror who was not an approved source when the request was issued was eligible for the award. The contention was without merit. The determination that the item sample met the agency's requirements was not disturbed. The affirmative responsibility determination was not reviewed. The allegation that the solicitation contained an incorrect drawing reference was untimely since it was filed after the closing date for receipt of initial proposals. (Author/SC)

03879

3993

## DECISION



*W. R. Boyle*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-189433

DATE: September 29, 1977

MATTER OF: LIPPS, Inc

### DIGEST:

1. Contention that offeror, who was not approved source when RFP was issued, is not eligible for award is without merit because RFP clearly permitted other offerors to become approved sources prior to award.
2. Protester contends that procuring agency improperly based source approval on very small quantity of required item and on short testing time. Agency's determination that item meets Government requirement--based on test results made matter of record--will not be disturbed by GAO where, as here, there is no showing that such determination is arbitrary, unreasonable or in violation of procurement statutes or regulations.
3. Contention that offeror does not have experience to provide required items will not be considered since GAO has discontinued reviewing protests against affirmative responsibility determinations, except in limited situations not applicable here. No doubt procuring agency will consider protester's reservations if responsibility determination is made.
4. Contention, made after closing date for receipt of initial proposals, that RFP contained incorrect drawing reference is untimely under GAO Bid Protest Procedures since alleged impropriety was apparent prior to closing date for receipt of initial proposals and will not be considered on merits. 4 C.F.R. § 20.2(b)(1) (1977).

LIPPS, Inc (Lipps) protests any award to the Re:DB Division of Pierce Industries, Inc. (Pierce), under request for proposals (RFP) No. F04606-77-R-0552 issued by the Sacramento Air Logistics Center (SMALC) for 539 recorder head assemblies. No award has been made.

Lipps essentially contends that: (1) Pierce is not eligible for award under the RFP because Pierce was not a "previously approved" source for recorder head assemblies when the RFP was issued; (2) the Government is assuming too great a risk in placing this large contract with a company that has never produced the items; (3) the RFP specifies part

B-189433

numbers 92002 and 92008 and does not permit "or equal" items; and (4) the RFP specifies the items in accord with the "basic" drawing, where's revision "J" should have been specified.

#### APPROVED SOURCE RESTRICTION

DD Form 1707, Information to Offerors or Quoters (section "A"-cover sheet), states that the procurement is restricted to only those sources for this item previously approved and refers to section D-1-C of the RFP. Section D-1-C provides in pertinent part that offerors other than the listed approved sources (the protester was listed) will not be considered for award under the RFP unless the offeror submits complete and current engineering data for the Government's evaluation to determine product acceptability.

The Air Force reports that the purpose of section D-1-C is to provide a means for sources other than those identified in the solicitation to gain Government approval of their products; in essence, this provision permits interested potential offerors to submit evidence of their ability to produce the item in question to the Government for its consideration and possible approval. The Air Force reports that Pierce complied with this provision; recorder head assemblies were submitted to SMALC in April and May 1977 and on May 17, 1977, SMALC personnel verified that the items met specification requirements. The Air Force concludes that by virtue of satisfying the Government test requirements, Pierce gained approved source status.

Therefore, Lipps' contention that Pierce--who was not an approved source when the RFP was issued--is not eligible for award under the RFP is without merit because the RFP clearly permitted other offerors to become approved sources prior to award.

#### RISK OF AWARD TO PIERCE

Lipps states that Pierce submitted a very small quantity of recorder head assemblies to SMALC for approval. Lipps contends that even though a few sets of those heads are acceptable on a given recorder, interchangeability on other existing equipment is not guaranteed. Lipps asserts that according to the recorder manufacturer, Magnasync/Moviola Corporation, 6 to 9 months would be required for evaluation to ensure acceptability and compatability with existing recorders. Lipps therefore concludes that the Government is assuming too great a risk by approving Pierce based on the small number of items submitted for evaluation and the short testing time when Pierce has never before manufactured the specified items.

B-189433

The Air Force reports that Pierce has demonstrated to the Air Force's satisfaction that the Pierce items exceed the minimum requirements by at least fifty percent. The test results were made a matter of record.

Lipps states that the RFP specifies part numbers 92002 and 92003 and says nothing about "or equal" items which is a very large risk on the part of the Government. In response, the Air Force states that there is no requirement for the use of the "or equal" language because the reference to the part numbers is only for the purpose of identifying those part numbers and manufacturers that have already met the source approval requirement. Source approval testing provides the necessary protection of the Government's interest and "or equal" language is not necessary to reduce the risks associated with this procurement.

To the extent that Lipps is contending that Pierce is offering an item not in conformance with Air Force requirements, we have recognized that Government procurement officials, familiar with the conditions under which equipment is to be used, are generally in the best position to know the Government's actual needs. Manufacturing Data Systems Incorporated, B-180586, B-180608, January 6, 1975, 75-1 CPD 6. Further, the determination of whether an offered item will satisfy the Government's needs is primarily the responsibility of the contracting agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. See, e.g., First Harlem Management Corporation, B-188454, July 7, 1977, 77-2 CPD 12. Procurement officials enjoy a reasonable degree of discretion in that evaluation and their determinations will not be disturbed unless clearly arbitrary, unreasonable, or in violation of procurement statutes or regulations. Tracor, Inc., 56 Comp. Gen. 62 (1976), 75-2 CPD 386.

Since the Air Force has presented the results of tests of Pierce's equipment and these tests show that the offered items exceed the Air Force's minimum requirements, we conclude that the Air Force's determination was reasonable.

To the extent that Lipps is contending that Pierce does not have the experience to provide the required items, while we presume that the Air Force will consider Lipps' reservation in making its responsibility determination, our Office has discontinued the practice of reviewing protests against affirmative determinations of responsibility, except in limited situations not applicable here. Sis-Q Flying Service, Inc., B-188194, April 7, 1977, 77-1 CPD 245. Accordingly, Lipps' contention concerning Pierce's experience will not be considered.


B-189433

INCORRECT SPECIFICATIONS

Lipps states that the RFP calls for part numbers 92002 and 92008 in accord with the "basic" Magnasync/Moviola and Lipps drawings, whereas the RFP should have specified those parts in accord with revision "J". In reply, the Air Force states that items previously procured in accord with the RFP's specification have been found to be acceptable and all offerors responded to the instant solicitation without objection. Furthermore, the items produced by Pierce in response to the solicitation satisfactorily met or exceeded Government test standards and there is no basis, therefore, to conclude that the solicitations as originally structured failed to insure satisfaction of the Government's requirements. Finally, the Air Force concludes that this issue is untimely raised since alleged solicitation improprieties must be protested prior to the closing date for receipt of proposals.

Lipps' contention, made after the closing date for receipt of initial proposals, that the RFP contained an incorrect drawing reference is untimely under our Bid Protest Procedures since the alleged impropriety was apparent prior to the closing date for receipt of initial proposals. 4 C.F.R. § 20.2(b)(1) (1977). Therefore, this issue will not be considered on the merits.

Protest denied.

  
Acting Comptroller General  
of the United States