DECISION

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

FILE: B-211196 **DATE:** September 19, 1983

MATTER OF: Riegel Textile Corporation

DIGEST:

Solicitation contained clause requiring that rental value of Government-owned production property authorized for rent-free use be added as evaluation factor to price of offeror possessing such equipment in order to equalize competition and clause requiring that total value of equipment be added as evaluation factor to offer of any offeror if subcontractor possessing equipment quoted to that offeror and not to others. Protest of contracting officer's determination that second clause did not apply to prime contractor possessing equipment and producing product for its own use is denied because neither statute, regulation nor GAO cases preclude such interpretation and because protester was aware of interpretation prior to preparation of its offer.

Riegel Textile Corporation (Riegel) protests request for proposals No. DAAJ09-83-R-A013 for camouflage systems, issued by the United States Army Troop Support and Aviation Materiel Readiness Command (TSARCOM). Riegel protests the contracting officer's interpretation of a solicitation clause pertaining to the evaluation of offers from offerors whose plants contain Government-owned production property or that subcontract with firms having such property.

We deny the protest.

The clause in question states:

"M2 EVALUATION PROCEDURES TO ELIMINATE COMPETITIVE ADVANTAGE FROM RENT-FREE USE OF GOVERNMENT-OWNED PRODUCTION PROPERTY

"a. Offerors must indicate the total amount of rent which would otherwise be charged for the Government-owned production property authorized for use, computed in accordance with the following:

[Rental rates are listed.]

* * * * *

"(c) The total of the rents listed above will be verified by the Government and added as the evaluation factor to the offeror's offer.

"b. Any subcontractor or vendor that has available in its plant, production property for which the Government either has title or has the right to acquire title, will be expected to quote to any prospective prime contractor who requests a quotation. If such subcontractor insists upon quoting to only one or a selected number of offerors, the total cost of such property in subcontractor's possession will be evaluated against the favored company's offer. The Government reserves the alternative right in such cases to prohibit the use of such property by the subcontractor for the production of items on contract as a result of this solicitation. Offerors are requested to notify the Government immediately of any refusal by a subcontractor possessing Government-owned production property to furnish a quote. In the event the Government elects to exercise its option to prohibit use of Government-owned property, prospective prime contractors to whom quotes have been furnished by the subcontractors will be so informed by the Government, permitting the prime contractor to establish another subcontractor source or make such other arrangements as it deems necessary."

Clause M2a is mandated by Defense Acquisition Regulation (DAR) §§ 13-402 and 13-501 et seq. (1976 ed). Clause M2b is a TSARCOM clause, not required by statute or regulation.

Brunswick Corporation (Brunswick), one of the competitors on this procurement, has Government-owned production property in its camouflage system producing

plant. TSARCOM has evaluated Brunswick's offer by adding the imputed rental charge specified in clause M2a to its offered price.

Riegel argues, however, that clause M2b should be used to evaluate Brunswick's offer, because Brunswick refused to quote camouflage cloth to Riegel on this procurement. Riegel contends that Brunswick is and has been a vendor and subcontractor for camouflage cloth and that on this procurement, even though Brunswick is a prime contractor only, Brunswick is selectively quoting to itself. Therefore, according to Riegel, the full value of the Government-owned equipment, which it values at $2.5 million, should be added to Brunswick's offer for evaluation purposes. Riegel urged the contracting officer to adopt this interpretation of clause M2b. However, prior to the due date for best and final offers, the contracting officer advised Riegel that clause M2a,not clause M2b,would be used to evaluate Brunswick's offer.

Brunswick and TSARCOM contend that clause M2b applies only to situations where a subcontractor is quoting to some prime contractors and not to others. According to TSARCOM, the clause is intended as a punitive measure to prevent collusive, noncompetitive practices between subcontractors and prime contractors. Since Brunswick is participating only as a prime contractor on this procurement, the clause does not apply to it. The rental charge specified in clause M2a is sufficient to neutralize the competitive advantage gained through the use of Government-owned production property, according to TSARCOM.

Brunswick and TSARCOM also point out that in addition to being mandated by DAR, the concept of imputed rental charges as a means of equalizing the competitive advantage flowing from rent-free use of Government-owned production property has been sanctioned by previous GAO decisions. See, e.g., B-160394, January 4, 1967; B-156358, April 28, 1965.

We find the evaluation proper. The cited DAR provisions and GAO cases require only that imputed rental charges be utilized to equalize the competitive advantage inherent in the possession and rent-free use of Government-owned production property. That was done in this case. While Riegel argues that a total-cost-of-equipment approach is the only way to effectively equalize competition in

these circumstances, we found in B-156358, supra, that such an approach was neither required nor desirable. The contracting officer's decision to not apply the total-cost-of-equipment evaluation factor here was consistent with regulations and case law and was conveyed to Riegel prior to the date set for receipt of best and final offers. Consequently, Riegel had the opportunity to prepare its offer with full knowledge of the contracting activity's position. While Riegel argues that the contracting officer cannot change a TSARCOM boilerplate clause, the contracting officer did not change the clause, but interpreted it in a manner that was ratified by both TSARCOM and the Army Materiel Development and Readiness Command.

Since the evaluation scheme set forth in clause M2a was in accordance with DAR and our prior decisions, and since the contracting officer's interpretation of clause M2b was reasonable, we conclude that evaluation on that basis is unobjectionable.

for Milton J. Socolar
Comptroller General
of the United States