



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ILC Data Device Corporation

File: B-243860

Date: July 17, 1991

Beruria Stroke for the protester.
Eric A. Lile, Esq., and Donald J. Sherfick, Esq., Department of the Navy, for the agency.
Catherine M. Evans, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee is not in compliance with military standard for production of custom hybrid microcircuits is dismissed where solicitation did not require compliance with the standard specified by protester, and protester has not shown that compliance with that standard is necessary to meet solicitation requirements.

2. Protest that solicitation is defective because it did not require compliance with military standard for production of custom hybrid microcircuits is untimely where not filed prior to time set for receipt of initial proposals.

DECISION

ILC Data Device Corporation protests the award of a contract to Natel Engineering Company, Inc. under request for proposals (RFP) No. N00163-90-R-0723, issued by the Naval Air Systems Command (NAVAIR) for hybrid microcircuits. ILC contends that award to Natel was improper because Natel is not qualified as a manufacturer under MIL-H-38534, a military standard pertaining to custom hybrid microcircuits.

We dismiss the protest.

The RFP required delivery of microcircuits in accordance with NAVAIR drawing No. 1425AS630, Revision A. The RFP was amended twice to incorporate Revisions B and C of the drawing. The drawing (and its subsequent revisions) stated that the microcircuit shall comply with section 3 of military specification MIL-M-38510, "except for product assurance and

marking."^{1/} The drawing set forth the following requirements for product assurance:

"Responsibility for Inspection: The supplier is responsible for all requirements and inspections as specified herein. The procuring activity reserves the right to perform any inspections deemed necessary to assure supplies and services conform to prescribed requirements.

100% Screening: Per table IV of this drawing.^{2/}

Certification of Compliance: A certificate of compliance shall be provided with each shipment certifying that all requirements of this drawing have been met."

The RFP provided for award to the responsible offeror conforming to the solicitation requirements at the lowest price. As Natel offered a unit price of \$318, and ILC offered \$325, the Navy awarded the contract to Natel.

ILC asserted in its protest that Natel is not qualified to perform the contract because it is not in compliance with military standard MIL-H-38534, as evidenced by the fact that it is not on the government's qualified manufacturers list (QML) for MIL-H-38534. The Navy fully responded to ILC's allegation in its report, explaining that the RFP did not require compliance with MIL-H-38534. ILC does not dispute the Navy's assertion that the RFP contained no reference to MIL-H-38534. Instead, ILC argues that it is "inherent" in the RFP's product assurance requirement, set forth above, that the contractor must meet the qualifications for MIL-H-38534.

ILC's interpretation of the RFP is untenable. The RFP expressly required compliance only with certain provisions of MIL-M-38510, a general specification for microcircuits. The RFP did not refer to MIL-H-38534, a different standard pertaining to custom hybrid microcircuits, and contains nothing to which ILC refers that implicitly required compliance with that standard. ILC does not allege that MIL-M-38510 requires compliance with MIL-H-38534. Thus, there simply is no basis for concluding that the awardee was

^{1/} MIL-M-38510 establishes general requirements for microcircuits, including quality and reliability assurance requirements.

^{2/} Table IV outlines a nine-step screening process which refers to certain testing and screening methods set forth in MIL-STD-883, Test Methods and Procedures for Microelectronics.

required to comply with the latter standard. To the extent that ILC may be arguing that compliance with MIL-H-38534 is necessary for product assurance purposes, the record indicates otherwise. The RFP specifically set forth the applicable product assurance requirements, quoted above, which included testing and screening procedures, and did not refer to MIL-H-38534. ILC's interpretation of the RFP is incorrect. See Accudyne Corp., 69 Comp. Gen. 380 (1990), 90-1 CPD ¶ 356. We conclude that the award to Natel was proper.

In its comments on the agency report, ILC appears to argue that the RFP was defective because it did not require compliance with MIL-H-38534. This protest ground is untimely; a protest of apparent alleged solicitation defects must be filed before the time specified for receipt of initial proposals, and ILC did not raise the issue until after award. 4 C.F.R. § 21.2(a)(1) (1991).

The protest is dismissed.


for John M. Melody
Assistant General Counsel