



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-228520.3

March 1, 1988

Mr. Richard P. Vanden Bosche  
President  
Strategies for Action, Inc.  
1902B Taylors Lane  
Cinnaminson, New Jersey 08077

Dear Mr. Vanden Bosche:

This responds to your letter of January 14, 1988, regarding the dismissal of your protest against the contract award to Copley Systems Corporation under invitation for bids (IFB) No. DAAD05-87-B-0983, issued by the Department of the Army for 40 Hewlett Packard Laser Jet Series II Printers or equal, and related equipment. We dismissed the protest because you did not respond to the Army's report within the 7-day period as required by our Bid Protest Regulations.

In your letter you state that our dismissal was unjustified. We explained our position, however, in a December 29, 1987, letter to you. We think it is important to reiterate that the notice we sent you to acknowledge receipt of the protest was clear that it was your responsibility to contact our Office within 7 working days of November 18, the report due date, if you did not receive the report on November 18, and what the consequences of not doing so would be. As we stated in our December 29 letter, we would not have dismissed the protest had you timely fulfilled that responsibility.

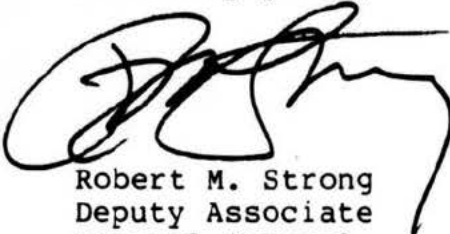
Notwithstanding the dismissal, however, we have reviewed your protest and find that it has no legal merit.

The IFB clearly advised bidders that if an "equal" product was proposed, the bidder had to furnish, as part of its bid, all descriptive material necessary to determine whether the product meets all salient characteristics specified in the IFB. The material also had to establish exactly what the bidder was proposing to furnish and what the government would be binding itself to purchase by awarding a contract to that firm.

Your firm submitted two bids in response to the IFB: your "brand name" bid was third highest in price out of 39 bids received, and your bid proposing an "equal" product was lowest. The record indicates that your "equal" bid was submitted with a two-page commercial flyer that generally described the printer proposed, but lacked the detail required by the Army to determine whether the offered product would meet 10 of the 18 required salient characteristics. Since the "equal" bid thus failed to provide adequate descriptive literature, the Army properly rejected it as nonresponsive. Although you now contend that your bid was responsive because your offered product meets all salient characteristics, the fact is that you did not provide that information in descriptive literature submitted with your bid as required by the IFB.

You also contended that Copley failed to acknowledge amendment No. 1 to the IFB, and therefore should also have been found nonresponsive. The record confirms that Copley did not sign the amendment, although the firm did submit it with the bid. In any case, you were not legally prejudiced by acceptance of Copley's bid since your lower bid properly was rejected; Copley bid the brand name item; the amendment relaxed a specification anyway; and there are other bidders who would be in line for award before your 37th low brand name bid if Copley's bid were not acceptable.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. M. Strong", with a large, sweeping flourish extending from the bottom right of the signature.

Robert M. Strong  
Deputy Associate  
General Counsel