



DIGEST - L-Cont

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

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B-176301

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Coulter Electronics, Inc.
c/o Muller & Mintz
Attorneys at Law
100 Biscayne Boulevard North
Miami, Florida 33132

Attention: Michael W. Casey III, Esq.

Gentlemen:

Further reference is made to your telefax of June 21, 1972, and subsequent correspondence concerning your protest under Invitation for Bids (IFB) No. S4221291, issued by the U. S. Bureau of Mines, Department of Interior, on March 3, 1972, for a multi-channel analyzer.

When bids were opened on March 30, 1972, it was noted that your concern had submitted two bids in response to the subject IFB, one for \$17,918, with a trade-in allowance of \$3,000 for a present Coulter System (Model B Electronic Box) currently in use at the Bartlesville Energy Research Center of the Bureau, and one for \$19,950.00 without trade-in allowance. The Department determined that your bid of \$17,918, was nonresponsive to the IFB, since the solicitation provided for a direct purchase of the analyzer with no provision for evaluation of a trade-in allowance. In view of this determination, the contracting officer made an award for the requirement on June 14, 1972, to Particle Data, Inc., the lowest responsive bidder at a bid price of \$16,000.

You state that, prior to bid opening, you were informally authorized by a representative of the Bureau to submit an alternate bid which would include a trade-in allowance for an older Coulter analyzer currently in use at the Center. In view of this informal advice, and of your belief that other bidders would also bid on a trade-in basis, you maintain that you did not attempt to submit a truly competitive bid on a non-trade-in basis, and that it was improper for the Center to reject consideration of your bid based upon a trade-in allowance.

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The Department states that you never questioned any Center representatives who had contracting authority regarding the submission of a trade-in allowance with your bid; that the analyzer which you assume was available for trade-in is still needed at the Center; and that you should have submitted a protest about the absence of a trade-in provision in the IFB prior to bid opening.

Paragraph 3, Explanation to Offerors, in Standard Form (SF) 33A of the subject IFB specifically provided that explanations concerning the interpretation of the solicitation must be requested in writing; that oral instructions before the award of the contract would not be binding; and that any information given to a prospective bidder concerning the IFB would be given to all offerors as an amendment to the IFB if such information was necessary to bidders in submitting bids on the solicitation. In view thereof, and even if we assume (for the purpose of discussion) that you were informally advised the Center would consider a bid with a trade-in from your concern, it is clear that such oral instruction was contrary to, and could not change or override the subject paragraph. It is equally clear that no award could have been made on the basis of a bid which was low because it contained a trade-in allowance, unless and until the IFB was amended to solicit bids on that basis from all bidders. Moreover, it is well-settled that acts of Government agents in excess of their actual authority do not estop the Government from asserting the invalidity of such acts. See Federal Crop Insurance Corporation v. Merrill, 332 U. S. 380 (1947). The Department reports, as noted above, that the employee who allegedly gave you the advice in question did not possess any contracting authority, and we therefore see no basis upon which to sustain your contention that you were justified in relying upon such advice in submitting a trade-in bid, or in failing to submit a more competitive non-trade-in bid because of your belief that your trade-in bid would be considered for award.

While it is therefore our opinion that the rejection of your bid based upon a trade-in allowance, was legally proper, we are recommending to the Secretary of Interior that action be taken to prevent the release of unauthorized advice concerning the submission of bids in future procurements.

For the reasons set forth above, your protest must be denied.

Very truly yours,

~~not signed~~
R.F. KELLER

Deputy Comptroller General
of the United States