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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20546

B-176861

JAN 24 1973

Simmonds Precision Products, Incorporated
Panton Road
Vermont, Vermont 05491

Attention: Mr. Donald R. McKeen
Contracts Manager

Gentlemen:

Reference is made to your letters of August 23, 1972, protesting against award of contracts to Ordnance Electronics Corporation under solicitations DAAB07-72-R-0754 and -0775, issued by the United States Army Tank-Automotive Command, Warren, Michigan.

The requests for proposals were for stated quantities of a fuel injector pump parts kit and a fuel metering pump parts kit, with both RFP's specifying a Simmonds Precision Products part number. Paragraph F-3 of the RFP stated that the "procurement is restricted (ASPR 1-313) to the item description set forth in the schedule which specifies a manufacturer's part number." Paragraph F-4 also stated:

"Sources not currently qualified as the item manufacturer, or a supplier to the manufacturer(s), of the specific item set forth in the Schedule, may offer their item for evaluation and approval. Offerors desiring to obtain approval shall contact the Contracting Officer (in writing) to obtain information as to the nature and extent of tests that will be required for Government evaluation and approval. The Government will consider such offers for future procurements, consistent with the Government's requirements and urgency of delivery."

It is reported that the Army received 3 proposals on the fuel injector pump kits and 4 proposals on the metering pump kits. The low offers were submitted by Ordnance Electronics Corporation which, according to the Army report, "had in its possession required drawings depicting the item to be procured" under both solicitations. As a result of technical reviews and a pre-award survey, the Army determined that "the item offered by Ordnance Electronics was identical to the Simmonds Precision item even though it was being manufactured by Ordnance Electronics."

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Best and final offers were then requested and you confirmed your original prices. Contracts were then awarded to Ordnance as the low offeror.

You protest the awards on the grounds that the procurements were restricted to your part numbers and that under paragraph F-4 of the solicitations Ordnance Electronics could only qualify for future procurements.

The Army, while admitting that the procurement "was structured around Simmonds parts," points out that several sources submitted competitive offers and states that since these procurements did not require "exacting performance requirements * * * precluding the use of even apparently identical parts from new sources," negotiation followed by award to the low offeror "was consistent with the competitive requirements of ASPR."

We have previously considered awards which were made to companies other than the one whose part numbers were specified in RFQ item descriptions without an "or equal" designation. In 47 Comp. Gen. 776 (1968), a request for quotations was issued for 71 digital voltmeters described as Cimron Division Part Number 7300A-631. The procurement was synopsized in the Commerce Business Daily for subcontracting purposes and a competitor of Cimron offered an allegedly equal item. No discussions were conducted with Cimron and a contract was awarded to the competitor after procurement officials satisfied themselves that the competitor's equipment was acceptable. In that decision our Office stated:

"From the foregoing it is apparent that the RFQ solicited a quotation from Cimron for an item manufactured only by Cimron, and it must therefore be assumed Cimron's quotation was submitted in the belief that only items manufactured by Cimron would be acceptable and that the procurement was therefore noncompetitive. It follows that the decision to consider quotations based upon items determined to be equal to those manufactured by Cimron operated not only to relax the specification requirements but also to transform the procurement from a noncompetitive to a competitive one. In such circumstances, it is our opinion that the provisions of ASPR 3-005.1(b) and (e) require amendment of the RFQ, notice of the amendment to the supplier initially solic-

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ited, and an equitable opportunity for the supplier to amend his quotation to reflect such changes as he may consider appropriate in the light of the changes accomplished by the amendment to the RFQ. * * *

In a later case we held that the same reasoning applied to offers for "identical" products as well as "equal" ones. We said:

"* * * The emphasis in 47 Comp. Gen. 776 was on the transformation of the procurement from noncompetitive to competitive with the necessary result that the named manufacturer's reasonable belief that only its product would be acceptable was erroneous. Whether the other manufacturer offered its product as 'identical' or 'equal' was not of crucial significance. Offers must be evaluated on an equal basis. Automatic Sprinkler's offer was submitted under a misapprehension that there was to be no competition while Lift Parts knew that its offer necessarily implied competition. The initial offers were not submitted on an equal basis and could not have been equally evaluated unless Automatic Sprinkler was notified of the competition and given an opportunity to respond to it. If that company, armed with the knowledge that it was in fact competing with another, would be willing to offer the Government a better bargain than that in its original proposal, it would be in the Government's interest to provide the company with that knowledge." 48 Comp. Gen. 605, 611 (1969).

See also B-170276, March 25, 1971.

A careful analysis of those cases indicates negotiations were not conducted with the manufacturers of the specified part numbers, that those manufacturers were not aware that competitive offers were being considered and, therefore, had no opportunity to amend their proposals to reflect such changes as they might deem appropriate in light of the competitive nature of the procurement. Here, however, you were asked to submit your best and final offer, and you have informed us that this put you on notice that the Army was considering other offers. With that understanding, you chose to confirm your prices as originally submitted. In these circumstances, it appears that you were not denied an equitable opportunity to compete. B-164046, October 15, 1968; B-170297, May 26, 1971.

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With regard to your claim that the procurements were restricted to your part numbers only, we have held that the absence of an expression in the RFP indicating the acceptability of an equivalent product does not preclude award to a company offering such product, B-149962, December 26, 1962 and 48 Comp. Gen. 605, *supra*, and that it is not "in the Government's interest to read a sole-source restriction into a solicitation which does not contain express language so restricting competition." B-164848, *supra*. Furthermore, we have recognized that ASPR 3-102(c) "requires that negotiated procurements be on a competitive basis to the maximum practicable extent", 51 Comp. Gen. 323, 327 (1971), and that both that section and ASPR 1-300.1 emphasize the necessity for effective competition and significantly limit sole-source procurement. 44 Comp. Gen. 784, *supra* (1965). We see nothing in the instant solicitations which mandates that awards could be made only to your firm.

ASPR 1-313, referenced in paragraph F-3 of the RFP's, permits sole-source procurement of replacement parts, but specifically allows procurement on a competitive basis when the reliability, safety, and effectiveness of the competitive product is assured. We think paragraph F-4 provides a qualification procedure for sources not currently qualified or able to establish their qualifications in time for award, but does not prevent award to sources currently qualified or found to be qualified. In this regard, we have held that award to a firm found to be capable of furnishing an acceptable product was proper notwithstanding solicitation language which appeared to restrict the procurement to a specified manufacturer. B-174384, May 9, 1972. Since the Army determined that Ordnance could supply items that were identical to your products and that such items were acceptable, we find no basis to object to the awards.

For the foregoing reasons, your protests are denied.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States