



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

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B-177217

June 26, 1973

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and Clarkson
Attorneys at Law
1200 18th Street, N.W.
Washington, D.C. 20036

Attention: Henry G. Beauregard, Esq.

Gentlemen:

Reference is made to your letter of May 4, 1973, and prior correspondence, protesting on behalf of Volt Technical Corporation (Volt) against the award of a contract to any other firm under Request for Proposals (RFP) FO4606-72-R-0490, issued by the Sacramento Air Materiel Command (SAMA).

The subject RFP, issued on April 27, 1972, was originally intended to be a sole-source procurement from General Dynamics/Convair Aerospace Division (GD/CAD) for nonpersonal services to accomplish changes/revisions to technical data in support of F-111 A/E and FB-111 aircraft. The Determination and Findings (D&F) to negotiate without formal advertising were made pursuant to the authority of 10 U.S.C. 2304(a)(10), because GD/CAD was the only manufacturer of the equipment in question and was therefore the only prospective contractor that had the detailed technical knowledge and systems familiarity to prepare and integrate the required changes.

The solicitation contemplated a one-year indefinite quantity contract with a best estimated quantity of 9,900 page revisions. A copy of the solicitation was furnished to Volt by the Small Business Office/DCRT-BB at the Defense Contract Administration Services Region (DCASR), Dallas, Texas. Two other parties also requested copies of the solicitation but failed to submit proposals for performing such services. Volt's proposal was the lowest; the second-lowest proposal being submitted by GD/CAD. In order to make a determination of Volt's ability to perform as a prospective contractor, SAMA requested the DCASR, Dallas, to conduct a preaward survey on Volt.

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The DCASR preaward survey team's report to the contracting officer dated August 22, 1972, recommended that an award not be made to Volt because of its unsatisfactory ratings on the following factors: (1) technical capability, (2) production capability, (3) plant facilities and equipment, (4) purchasing and subcontracting and (5) ability to meet required schedules.

More specifically, the preaward survey team found that, at the time of the survey, Volt did not have the capability for validating revised data, as required by the RFP without Government assistance. This led to a determination of an unsatisfactory technical and production capability. Further, performance of the contract required access to an F-111 aircraft and associated ground equipment (AGE) for validation of revised technical data. When Volt failed to provide evidence that it could or would gain access to such necessary equipment for validation services from Carawell AFB or GD/CAD through its own effort and without SMAMA support, its purchasing and subcontracting arrangements were determined to be inadequate, as were its plant facilities and equipment. Also, by failing to prove its ability to obtain required data or provide validation of revised data on its own, Volt did not establish that it could meet the required delivery schedule and was found unsatisfactory as to such required delivery schedules.

Therefore, as the intent and requirement of the RFP was to obtain 100 percent services for data revision and validation and it was not the intent of SMAMA to provide bidders with source data or access to AGE for validation purposes, Volt failed to assure the preaward survey team that it was capable of complying with the total requirement of this procurement and a recommendation of no award was made. Based upon the negative preaward survey, the contracting officer made a determination that Volt was not responsible because it did not meet the standards for a responsible prospective contractor as set forth in the Armed Services Procurement Regulation (ASPR) 1-903.

The basis of your protest is that the validation problem could be resolved if the Air Force cooperated in providing access to the necessary equipment and facilities and that the findings contained in the DCASR preaward survey report were not accurate.

The report from the Department of the Air Force discloses that the compiler data necessary for this project included production aids for the F-111 program used in producing test tapes for testing F-111

avionics items for maintenance and operational purposes. Additionally, GD/CAD is still in the process of developing such data and such data will not be in a condition suitable for delivery to the Government until December of 1973. Further, to verify the correctness of the changed/revised data, Volt would have to have access to several types of F-111s and AGE materials. Presently, all of this equipment is located at GD/CAD and is necessary for its performance of the F-111 production contract. Volt does not have access to any of this equipment at another location nor could the Government remove such from the GD/CAD's facilities without impairing GD/CAD's own contract with the Government. Also, SMAMA had neither the AGE nor the aircraft to make available to Volt, and the cost of producing another set of materials was prohibitive. Finally, on September 22, 1972, the F-111 SPO informed SMAMA that to provide access to another contractor to the AGE and aircraft at GD/CAD would impact on production schedules and would be totally unacceptable.

As was stated by SMAMA in their message dated August 21, 1972, "It was not the intent of the work statement for the Government to provide the prospective contractor or any successful bidder access to AGE and personnel to operate equipment for validation purposes. This, argues Air Force, would put the Government in an untenable position of having to renegotiate the F-111 production contract with GD/CAD." On the basis of these facts, it appears that it would have been impossible for the Air Force to cooperate in the manner suggested by Volt, and, in our opinion, the failure of the Air Force to cooperate to any greater extent was justified, due to these circumstances, and such actions were neither arbitrary nor capricious under the facts as reported.

Regarding your second contention, that the finding of nonresponsibility was erroneous, our Office has consistently taken the position that the question as to the qualifications of a prospective contractor primarily is for determination by the procurement officers concerned and in the absence of any showing of bad faith or lack of a reasonable basis for the determination, we are not required to object to the determination made by the administrative agency. 37 Comp. Gen. 430, 435 (1957).

On the basis of our review of the record and consideration of the information relied upon by the contracting officer in making his determination of your lack of responsibility, we find no basis upon which to legally object to the action taken.

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Since the contract with GD/CAD will not be fully performed until November 5, 1973, and there is no option to extend, it is impossible at this time to know whether the circumstances that may then prevail would justify a new D&F authorizing a sole-source award to GD/CAD. Consequently, we must decline to consider this prospective aspect of your protest.

For the foregoing reasons, your protest is denied.

Sincerely yours,

Paul G. Darbling,

Acting Comptroller General
of the United States