



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20541

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B-178192

July 27, 1973

The Honorable John W. Warner  
The Secretary of the Navy

Dear Mr. Secretary:

This is in reply to the April 3 and May 11, 1973, letters from the Director of Contracts, Naval Electronics Systems Command (NESC) regarding the protest of Technology for Communications International (TCI) against award of a contract under Invitation for Bids (IFB) N00039-73-B-0254, Step II, issued by NESC.

Request for Proposals (RFP) N00039-73-R-0254(Q) Step I, calling for unpriced technical proposals for high take-off angle antennas and ancillary items, was issued on December 1, 1972. Proposals were received from TCI and from Granger Associates. After holding discussions with both offerors, the Navy determined that the proposals submitted by both firms as supplemented were acceptable. On February 23, 1973, the second step IFB was issued, calling for prices on the proposals deemed acceptable. TCI bid \$173,297.90, while Granger bid \$156,899.85, and after evaluating transportation costs the Navy determined that Granger's bid was the lowest. Award of a contract to Granger has been delayed pending resolution of the protest.

TCI argues that the Granger proposal deviates from the specification requirements and therefore its second step bid is nonresponsive. Alternatively, it is argued that the Step I specifications should have been revised by an amendment to the RFP so as to give TCI an opportunity to submit a proposal on an equal basis. TCI also claims that the Granger bid was nonresponsive because it did not contain required shipping information. TCI has abandoned its previously expressed assertions that the Granger bid should be rejected because it did not indicate the quantity of silver to be used in performance of the contract and because the bid was signed by someone without authority to execute bids for Granger, and therefore we will not consider those claims.

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53 Comp. Gen. ....

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Section F of both the Step I and Step II solicitations contained the following provision:

**3.4.5 - Tower climbing equipment.** A ladder with safety climbing device shall be provided for climbing the full length of the tower.

\* \* \* \* \*

**3.4.5.2 - Ladder.** The ladder shall be made of either steel or aluminum conforming to either the specification listed under the material section of the latest issue of the American Institute of Steel Construction (AISC) specification for the Design, Fabrication and Erection of Structural Steel for Buildings or the specification listed under the material section of the American Society of Civil Engineers (ASCE) Structural Division Proceedings Paper No. 3041 and 3342. "Suggested Specifications for Structures of Aluminum Alloy 6061-T6, 6062-T6, 6063-T5, and 6063-6T."

Inside dimensions between stringers shall be 18 inches unless otherwise specified. Center to center spacing of rungs shall be 12 inches. Ladders shall be shop assembled in approximately 30-foot sections. Angle brackets for bolting ladders to the tower shall be punched for bolts and provided for connection to the tower bracing members of the towers.

The rungs shall be 3/4 inch in diameter minimum. Vertical stringers shall be 2-1/2 x 3/8 inch thick minimum. Angle brackets shall be 3/8 inch thick minimum spaced not more than 10 feet apart.

Steel ladders shall be galvanized after fabrication. Splice plates for bolted connections shall be provided at all ends for connecting individual sections.

TCI proposed to furnish a separate ladder, while Granger proposed a ladder that would be an integral part of the antenna structure.

TCI asserts that acceptance of the Granger proposal would be "in complete derogation" of the specifications, which it insists required a separate, shop-assembled ladder rather than just the

addition of rungs to the tower structure. On the other hand, the Navy points out that the Granger proposal was evaluated by Navy engineers and found to be acceptable, and that since a "separate" ladder was not called for by the specifications, the flexibility inherent in two-step procurement allows acceptance of Granger's approach "without relaxation or changing the specifications to favor Granger." This position is also vigorously supported by counsel for Granger.

The two-step formal advertising procedure has been recognized as combining the benefits of competitive advertising with the flexibility of negotiation. 50 Comp. Gen. 346 (1970). "While the second step of this procedure is conducted under the principles of formal advertising (ASPR 2-503.2), the first step, in furtherance of the goal of maximized competition, contemplates the qualification of as many technical proposals as possible under negotiation procedures." 50 Comp. Gen. 346, 354. This procedure requires that technical proposals comply with the basic or essential requirements of the specifications but does not require compliance with all details of the specifications. 46 Comp. Gen. 34 (1966); 50 Comp. Gen. 337 (1970); 51 Comp. Gen. 83 (1971); ASPR 2-503.1(e).

Thus, we have recognized that the responsiveness of a first-step proposal would not be affected by its failure to meet all specification details "if the procuring agency is satisfied \* \* \* that the essential requirements of the specification will be met." 50 Comp. Gen. 337, 339, supra. Here the Navy believes that the Granger proposal satisfies its requirements and therefore rejection of the proposal would not be appropriate. 51 Comp. Gen. 592 (1972). However, if the Granger proposal represents a basic change to the specification requirements, then before it can be accepted the Navy is obligated to inform TCI of the change and provide it with an opportunity to submit a proposal in accordance with the revised specifications. 51 Comp. Gen. 85, supra.

The Navy letter accompanying the RFP "authorized and encouraged" offerors "to submit multiple technical proposals presenting different basic approaches." The General Instructions section of the RFP advised offerors to provide sufficient detail in their proposals to enable the Government to determine "at the proposed equipment will have a reasonable likelihood of meeting the requirements of the Government as set forth in the specifications." (Underscoring supplied.) While these provisions adequately advised prospective offerors that a variety of engineering approaches to satisfy these requirements would be acceptable, all such approaches must stay within the confines of the basic specification provisions.

With regard to the dimensions involving the rungs and stringers, the contracting officer reports that Granger originally proposed rungs that were 20" apart, but was required to provide rungs with closer spacing to permit easier ascent and descent. The Granger proposal that was accepted calls for rungs 10" apart and 1- $\frac{1}{2}$ " thick, thus exceeding specification requirements. The contracting officer further reports that:

The dimension for stringers is critical as an inside dimension since the safety climbing device, which runs down the center of the ladder, would make it difficult for a workman to straddle the device and climb the ladder if the ladder were narrower than 18 inches. The portion of the Granger antenna tower which also serves as ladder stringers is approximately 40 inches. Prior to the acceptance of the Granger proposal, this dimension and the ladder configuration were reviewed by engineers of the Navy Facilities Engineering Command who determined that the requirements of the OSHA and the ladder specification were met.

We think this explanation clearly indicates that the rung and stringer dimensions of the Granger tower climbing equipment do not deviate from the minimum essential requirements of the specifications and do not represent a substantial change to the specifications.

With regard to the ladder itself, however, we think the record clearly indicates that at the time the first-step RFP was issued the Navy was contemplating an antenna with a separate ladder. Both the language in the specifications (providing for "bolting ladders to the tower" and for splice plates "for bolted connections") and the Navy's administrative position that Granger's approach was "novel and innovative" suggest that the possibility of a ladder that would be an integral part of the antenna structure was not considered when the specifications were drafted. ASPR 2-503.1 requires first-step RFPs to include criteria (such as design and performance characteristics) for evaluating technical proposals, and we have previously urged the inclusion in RFPs of the specific criteria "for evaluation of those proposals which may present new or basically different systems" from that described in the solicitations. 46 Comp. Gen. 34, 41, supra. Thus, while the Navy is technically correct when it points out that the RFP provisions do not state with specificity that a "separate" ladder is required, we think the specification sections dealing with the ladder reasonably appear to indicate just such a requirement against which proposals were to be evaluated.

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In our opinion, it would be unfair to TCI, which apparently has furnished antenna towers with integral climbing devices in the past, to allow Granger to propose a nonseparate ladder when it is clear that TCI may not have offered a similar (and, according to TCI, a substantially less expensive) proposal solely because of its reasonable interpretation of the specifications.

Our decisions have consistently recognized that the flexibility of two-step advertising does not obviate the necessity for adherence to stated evaluation criteria and basic specification requirements. In B-157827, February 7, 1966, we agreed with the procuring agency that a change in specified friction tolerances for an altimeter was a major specification change and that issuance of an amendment to the RFP to reflect this change after evaluation of proposals received under Step I was proper. In B-155433, June 17, 1965, we indicated that proposals for furnishing air conditioned vans with piston compressors could not be accepted without a waiver of the specifications which required a rotary compressor. We noted that the agency "had determined that a rotary, helicon compressor was essential to the Government's needs" since the agency's prior experience indicated that a van lacking a high speed rotary compressor would not satisfy its requirements. In 45 Comp. Gen. 487 (1966), we held that rejection of a bid was required because it was based on furnishing an oscilloscope as part of a package of technical air navigation equipment that did not meet specification requirements in several respects. Finally, in 51 Comp. Gen. 592, supra, a requirement that there be adequate tailgate clearance on firefighting trucks to permit ready access to equipment on the truck was regarded as an essential element of the specifications.

In view of the above and in light of the Navy's determination that the Granger proposal will satisfy its requirements, we think the Step I specifications should have been amended to clearly reflect the acceptability of a tower climbing device which is an integral part of the tower. Accordingly, the Step II IFB should be cancelled and the Step I phase of the procurement should be reopened to give offerors an opportunity to submit proposals on an equal basis.

In view of our conclusion it is not necessary to discuss TCI's other contention concerning the shipping information.

Sincerely yours,

K. H. Morse, Jr.

For the Comptroller General  
of the United States