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

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November 20, 1973

Triumph Corporation
2130 South Industrial Park Avenue
Tampa, Arizona 85281

Attention: Mr. Leo Michaud
President

Gentlemen:

We are in receipt of your letter of September 26, 1973, and prior correspondence, protesting the rejection of your proposal submitted under request for proposals (RFP) DAAA09-73-R-0081, issued on May 21, 1973, by the Army Munitions Command. The RFP was issued pursuant to 10 U.S.C. 2304(a)(16), as implemented by paragraph 3-216 of the Armed Services Procurement Regulation (ASPR), for 8,396,250 rodia type boosters, M125A1 MTS assy, w/M7 detonator. The design of this item is different than the M125A1 booster which had been procured previously.

Under 10 U.S.C. 2304(a)(16) a contract may be negotiated if the head of the agency determines that (A) it is in the interest of national defense to have a plant, mine or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved. This authority is implemented in ASPR 3-216.2:

"* * * The authority of this paragraph 3-216 may be used to effectuate such plans and programs as may be evolved under the direction of the Secretary to provide incentives to manufacturers to maintain, and keep active, engineering and design staffs and manufacturing facilities available for mass production. The following are illustrative of circumstances with respect to which this authority may be used.

- "(i) when procurement by negotiation is necessary to keep vital facilities or suppliers in business; or to make them available in the event of a national emergency;
- "(ii) when procurement by negotiation with selected suppliers is necessary in order to train them in

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[Protest Against Proposal
Rejection]

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the furnishing of critical supplies to prevent the loss of their ability and employee skills, or to maintain active engineering, research, and development work; or

"(iii) when procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization. (When the quantity required is substantially larger than the quantity which must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will ordinarily be procured by formal advertising or by negotiation under another appropriate negotiation exception.)"

The determination as to whether it would be in the best interest of the Government to negotiate a contract and thus assure the availability of a particular industrial mobilization base is vested in the head of the military department by the statute and the ASPR, 49 Comp. Gen. 463 (1970). In this regard, we have held that the determination of the needs of the Government with respect to industrial mobilization and the method of accommodating such needs is primarily the responsibility of the procuring agency. Except in situations where convincing evidence has been produced indicating that the administrative discretion was abused, our Office will not challenge those determinations. 49 Comp. Gen., supra.

The RFP was issued initially to the six firms having current mobilization agreements with the Government for the old style M125A1 booster. Prior to the issuance of the RFP, several firms, including the Triumph Corporation, which were not included in the mobilization base for the old style M125A1 had requested that they receive copies of any future procurement for the booster. When the present RFP was released, these firms were each sent a telegram which explained that the procurement of the new module style M125A1 was being restricted to those six firms holding valid mobilization agreements for the old style M125A1 and that no other firms would receive a solicitation package.

Triumph and another firm subsequently insisted on receiving the RFP. It was furnished to them pursuant to ASPR 1-1002.1. The cover letter to Triumph which accompanied the RFP stated that the RFP was restricted to those companies included in the present mobilization base. Specifically, it was stated that " * * * any offers which may be received from firms, including yours, which are outside that base will not be considered for award under RFP DAAA03-73-C-0081."

On June 8, 1973, proposals received under the RFP were opened. At that time a package was received from Triumph. The markings on the outside of the envelope identified it as Triumph's offer on -R-0081. This unsolicited package from Triumph was rejected and was returned unopened on June 22, 1973. The reason for this action, the fact that the RFP was restricted, was again explained to Triumph in the cover letter accompanying the returned submission.

The Triumph protest to our Office followed the rejection of the offer. The agency determined, thereafter, pursuant to ASPR 2-407.8(b), that because of the urgent need for the items, award of the contract should be made prior to our decision. Awards were made on June 29, 1973, to three base producers: Etowah Mfg. Co.; DVA Division of Alcotronics; and Westlox Division of General Time Corporation.

Triumph contends that the Army acted improperly in limiting the procurement of the module style booster to mobilization base producers of the old style booster. In support of this argument, Triumph raises questions of the technical differences between the two types of boosters and also notes that the initial procurement of 2.5 million module style boosters was solicited on an essentially free competition basis, yet this procurement of 8.5 million units was restrictively solicited to maintain a mobilization base for an outdated item.

Triumph states, and the agency agrees, that there is almost no commonality of parts between the old M125A1 booster and the M125A1 booster being presently procured. The agency, however, states that all the skills required for manufacture of the old booster are readily adaptable to the manufacture of the module style booster and that only minor changes in capital equipment are required for the changeover of production.

Triumph contends, however, that the old design is based in large part on the use of either special forgings or elaborate machine tooling to provide a cavity in the booster body itself to provide a means of building the escapement into the booster. The new design, it states, provides a modular type of construction, in which the entire escapement is a module consisting of mated plates incorporating a gear train escapement mechanism. It is argued that this design requires precision assembly skills not required in the previous booster.

It is not questioned that there should be a viable industrial mobilization base for the M125A1 booster. Therefore, the issue is whether this desired end of assuring a viable industrial mobilization basis should have been achieved by utilizing the old mobilization base or by creating

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a new mobilization base for the new style booster which may have included Triumph. While Triumph and the agency do not agree on the principle question regarding the transferability of skills and equipment from the manufacture of the old style booster to the new style booster, we believe that sufficient evidence has not been produced which would allow us to refute what is essentially a technical determination made by the Army in this regard. As such, we see no impropriety in attempting to maintain the requisite skill level in the industry and maintain a capability for production through a solution restricted to the old style M25A1 booster base.

Accordingly, the protest is denied.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States