

01340

B. Ruffert
Proc # I

DECISION



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

FILE: B-186856

DATE: November 30, 1976

MATTER OF: Martin & Turner Supply Company

DIGEST:

1. Where IFB required that component of procured item be obtained from sole-source vendor unless substitute component is tested by vendor and approved by Naval Air Engineering Center, compelling reason to cancel IFB after bid opening exists since sole-source vendor who submitted bid refused to furnish price quotations to other bidders who apparently could not meet qualification requirement.
2. Bidder offering to furnish component of procured item from source other than vendor approved prior to bid opening as required in IFB is ineligible for award.

Martin & Turner Supply Company (M&T) protests the cancellation of invitation for bids (IFB) N68335-76-B-1063, issued by the Naval Air Station, Lakehurst, New Jersey, for eight socket tester assemblies for the MX-7 arresting gear.

The grip assembly, a component of the socket tester, is subject to source control drawing 513745 listed in the IFB. The drawing lists the test procedures and Lucker Mfg. Co. (Lucker) as the vendor. Note 7 on the drawing provides:

"Only items described on this drawing when procured from the vendor(s) listed hereon are approved by the Naval Air Engineering Center, Lakehurst, N. J., 08733 for use in the application(s) specified hereon. A substitute item shall not be used unless it has been tested by the vendor and approved by the Naval Air Engineering Center, Lakehurst, N. J., 08733 prior to the open/closing date of the solicitation."

Eight bids were received. M&T submitted the lowest bid of \$5,290 per unit. The second low bid was submitted by Lucker in the amount of \$6,785 per unit. A preaward survey of M&T was conducted by the Defense Contract Administration Services Division (DCASD), Philadelphia, Pennsylvania. The survey report indicates that M&T requested a quotation from Lucker for the grip

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assembly, but Lucker refused to furnish a quote on this item to any firm. In the circumstances, M&T planned to obtain the grip assemblies from Washington Chain & Supply Co. However, M&T failed to qualify the substitute prior to bid opening as required by the source control drawing. In view of M&T's inability to obtain a delivery quotation from Lucker, DCASD found it impossible to ascertain whether M&T could meet the IFB delivery schedule and recommended for that and other reasons that no award be made to M&T.

The contracting officer verified that the third lowest bidder also had been unable to obtain a quotation from Lucker. As a result, the contracting officer decided that the specifications were inadequate to obtain competition and that cancellation was appropriate in accordance with Armed Services Procurement Regulation (ASPR) § 2-401.1(b)(1) (1975 ed.).

M&T protests the cancellation for the following reasons:

- "#1: When a bid is re-solicited it gives our competitor the opportunity to drop his price to match our previous figure.
- "#2: We are the lowest legitimate bidder and have effected a considerable saving to the Government over the next bid.
- "#3: The Government drawings were improperly made showing a sole source.
- "#4: Before submitting our bid we had our subcontractor contact Lucker to obtain what appeared to be a special item and he refused on three occasions to even give us a quotation and this is against the law. He went so far as to make the statement that if the Government was going to buy this material they would buy it from him, and he felt sure, because of the notation on the drawing he could get any price he wanted.
- "#5: I think the ASPR regulation should be carefully studied and you will probably find under the regulation that you are authorized to buy the material from us."

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Our Office ordinarily will not question the broad authority of the contracting officer to reject all bids when a "compelling reason" to do so exists. Cummins-Wagner Co., Inc., B-186686, September 21, 1976, 76-2 CPD 264. 10 U.S.C. § 2305(a) (1970) provides that specifications and IFBs shall permit such free and full competition as is consistent with the procurement of the property and services needed by the agency concerned. The contracting officer has indicated that the IFB was restrictive of competition in that bidders apparently could not meet the qualification requirement and the only approved source refused to furnish bidders any price quotations. Therefore a compelling reason to cancel the IFB after bid opening existed. In that connection, see Cummins-Wagner, supra, wherein there was considered an IFB containing a requirement which limited bidders that might otherwise be capable of performing from bidding successfully. Cancellation of the IFB was upheld on the basis that the requirement was restrictive and may have affected competition adversely.

We do not agree with M&T that an award could be made to it under the IFB. The record discloses that an affirmative determination of responsibility was precluded since, among other reasons, M&T planned to obtain the grip assemblies from Washington Chain and Supply Co., a source that had not been tested and approved prior to bid opening as required by the IFB. Therefore, M&T was ineligible for an award under the IFB even if, as it contends, it supplied similar equipment during World War II and under recent contracts. In this regard, the IFB provided for approval of the grip assembly by the Naval Air Engineering Center and the Center has never approved the equipment M&T intended to use.

Under the circumstances, the cancellation of the IFB was proper and the protest is denied.


Deputy Comptroller General
of the United States