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Mike Boyle
Proc. I

DECISION



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

FILE: B-187805

DATE: March 29, 1977

MATTER OF: Standard Conveyor Company; Rohr Industrial Systems, Inc.

DIGEST:

1. Procuring activity's approval in first step of two-step procurement of low bidder's technical proposal offering 16-gage in lieu of "14-gage or thicker" steel rollers without advising other offerors was improper because (1) request for technical proposals clearly required "14-gage or thicker" steel rollers and (2) decision to relax that mandatory requirement for one offeror constituted basic change in the Government's minimum needs that should have been communicated to all offerors. Recommendation is made that step two IFB be canceled and step one phase reopened based on Government's current minimum needs.
2. Low bidder's contention that protest is untimely under Bid Protest Procedures, 4 C.F.R. part 20 (1976), because specification requiring "14-gage or thicker" steel rollers should have been questioned as to allowability of substituting thinner steel prior to closing date for receipt of proposals is without merit since request for technical proposals contained no apparent impropriety.

Standard Conveyor Company (Standard) and Rohr Industrial Systems, Inc. (Rohr) (now RISI Industries, Inc.), protest any award under invitation for bids (IFB) No. DSA700-76-B-2279 issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio, to the apparent low bidder, Rapistan, Inc. The IFB is the second step of a two-step formally advertised procurement for warehouse mechanization and modernization equipment. Standard and Rohr essentially contend that DCSC's approval of Rapistan's step one technical proposal responding to request for technical proposals (RFTP) No. 76-1 and offering rollers of 16-gage steel in lieu of 14-gage is improper because the specifications require, as a minimum, 14-gage. Gage is a measure of thickness--as gage decreases, thickness increases.

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Pertinent provisions of the RFP follow:

"2. EXPLANATION TO OFFERORS: ANY EXPLANATION DESIRED BY AN OFFEROR REGARDING THE MEANING OR INTERPRETATION OF THE SOLICITATION, DRAWINGS, SPECIFICATIONS, ETC., MUST BE REQUESTED IN WRITING AND WITH SUFFICIENT TIME ALLOWED FOR A REPLY TO REACH OFFERORS BEFORE THE SUBMISSION OF THEIR OFFERS. ORAL EXPLANATIONS OR INSTRUCTIONS GIVEN BEFORE THE AWARD OF THE CONTRACT WILL NOT BE BINDING. ANY INFORMATION GIVEN TO A PROSPECTIVE OFFEROR CONCERNING A SOLICITATION WILL BE FURNISHED TO ALL PROSPECTIVE OFFERORS AS AN AMENDMENT OF THE SOLICITATION, IF SUCH INFORMATION IS NECESSARY TO OFFERORS IN SUBMITTING OFFERS ON THE SOLICITATION OR IF THE LACK OF SUCH INFORMATION WOULD BE PREJUDICIAL TO UNINFORMED OFFERORS.

* * * * *

"7. MULTIPLE TECHNICAL PROPOSALS:

"A. MULTIPLE TECHNICAL PROPOSALS (1974 APR). IN THE FIRST STEP OF THIS TWO STEP PROCUREMENT, OFFERORS ARE AUTHORIZED AND ENCOURAGED TO SUBMIT MULTIPLE TECHNICAL PROPOSALS PRESENTING DIFFERENT BASIC APPROACHES. EACH TECHNICAL PROPOSAL SUBMITTED WILL BE SEPARATELY EVALUATED AND THE OFFEROR WILL BE NOTIFIED AS TO ITS ACCEPTABILITY.

"B. ANY MULTIPLE OR ALTERNATE APPROACH PRESENTED MUST MEET THE OPERATION REQUIREMENTS AND PERFORMANCE REQUIREMENTS OF THE GOVERNMENT PURCHASE DESCRIPTION, REFERENCED IN PARAGRAPH 4, ABOVE. DEVIATIONS TO THE LAYOUT AND MECHANICS MAY BE PROPOSED, PROVIDING SUGGESTED PROPOSALS ENHANCE PRODUCTION, REDUCE STAFFING, IMPROVE SAFETY, INCREASE DEPENDABILITY OR EXTEND CAPABILITY. ALL MULTIPLE OR ALTERNATE APPROACHES MUST BE SPECIFICALLY IDENTIFIED AND SEPARATELY NUMBERED IN THE TECHNICAL PROPOSAL.

* * * * *

"11. EVALUATION OF TECHNICAL PROPOSALS:

TECHNICAL PROPOSALS WILL BE EVALUATED UTILIZING THE FOLLOWING CRITERIA:

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"A. THE SYSTEM PROPOSED MUST BE COMPLETE AND ITS DESIGN MUST DEMONSTRABLY MEET ALL TERMS, CONDITIONS, PURPOSES AND REQUIREMENTS OF THIS REQUEST AND ITS APPLICABLE SPECIFICATIONS."

Pertinent provisions of the specifications follow:

"SECTION 2 - GENERAL REQUIREMENTS

* * * * *

"2.3 - Unless otherwise specifically stated, all materials shall be new and of the most suitable grade for the purpose intended. Where applicable, the equipment shall conform to the minimum requirements set forth in Sections 6 and 7 of this specification.

* * * * *

"SECTION 5 - PERFORMANCE REQUIREMENTS

"5.1 General

"The installed mechanized materials handling system will be capable of accomplishing the performance requirements specified in this section. The process description of this system provided in Section 4 of the specification must be complied with when these performance requirements are accomplished. The requirements of this section are considered mandatory.
* * *

* * * * *

"SECTION 6 - EQUIPMENT AND CONTROLS

"6.1 - Equipment and Material: Dimensions specified herein are considered nominal. When any of the types of equipment specified herein are to be used in the proposed system, the bidder shall adhere to the following minimum requirements. Different types of equipment may be submitted provided the design capacity requirements are met and equipment is approved by the Contracting Officer.

"6.1.1 - Gravity Roller Conveyor, 24

* * * * *

"6.1.1.3 - Rollers: Shall have a rating of 150 pounds per roller and 1.9" diameter, of 14-gage or thicker steel and be not less than 21" overall length, and will be spaced on 3" centers. * * *" (Emphasis supplied.)

Rollers of 14-gage or thicker steel are also specified in eight other sections of the RFTP for the 30-inch gravity roller conveyor, the 24-inch and 30-inch line roller conveyors, and the 30-inch accumulation line roller conveyor.

Eight timely technical proposals were received and evaluated. Seven offerors, including Rapistan, Standard, and Rohr, were advised that their technical proposals were acceptable. Rapistan proposed to substitute 16-gage steel in lieu of 14-gage steel rollers. To verify that 16-gage steel rollers were acceptable, Rapistan contacted two DCSC officials and was again assured that the thinner rollers were acceptable. Bids in response to the second step of the procurement revealed the following prices, including the data and training options, on CLIN 0001--the complete system--and CLIN 0002--the complete system less a receiving function:

<u>Bidder</u>	<u>CLIN 0001</u>	<u>CLIN 0002</u>
Rapistan	\$2,194,138	\$1,616,963
Rohr	2,223,069	1,682,569
Standard	2,238,178	1,847,296
Shiffer	2,353,790	1,769,316
Jervis Webb	2,487,327	1,767,381

Although the Defense Logistics Agency's (DLA) report on the protest recognizes that sections 2.3 and 6.1 lend some support to the conclusion that section 6 reflected mandatory minimum requirements, DLA contends that the RFTP, when reasonably interpreted as a whole, required only that technical proposals meet the performance requirements of section 5. DLA's rationale is that: (1) sections 7A and 7B authorized and encouraged offerors to submit multiple technical proposals utilizing different basic approaches meeting operation and performance requirements; (2) sections 2.2 and 5.1 of the specifications, as well as the first-step negotiations, and the evaluation

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criteria of section 11 emphasized the performance requirements of section 5 of the specifications rather than the design requirements of section 6, and (3) in two-step procurements, it has long been recognized that technical proposals need not comply with all the details of the specifications, citing 51 Comp. Gen. 85 (1971); 50 Comp. Gen. 337 (1970); 46 Comp. Gen. 34 (1966); and B-168138, February 17, 1970.

In addition, DLA states that the following portion of our decision, B-178192, October 29, 1973, which affirmed, on reconsideration, our decision at 53 Comp. Gen. 47 (1973), supports its position:

"* * * In making this determination [specifications should be amended to reflect integral ladder as part of a tower], we necessarily considered not only whether, from a technical point of view, the ladder requirement was actually a 'basic' one with respect to the procurement of the overall antenna system, but also whether the solicitation reasonably indicated to offerors that they were free to deviate from this particular requirement. * * *"

It is DLA's position that not only did the RFTP advise offerors that they could deviate from the requirements of section 6 of the specifications but the change in gage was not a "basic" change from a technical standpoint. Further, DLA contends that the difference in cost between 16-gage and 14-gage steel rollers, and the possible resultant difference in Standard's or Rohr's proposed prices, is speculative. DLA concludes that since Rapistan did not take exception to the performance requirements and since other offerors were encouraged to utilize different approaches, the acceptance of Rapistan's proposal without amending the RFTP did not prejudice other offerors.

Rapistan concurs with DLA's position and in addition contends that Standard's protest is untimely under our Bid Protest Procedures, specifically 4 C.F.R. § 20.2(b)(1) (1976), because Standard should have requested written clarification of the possible substitution of 16-gage for 14-gage steel rollers before the closing date for receipt of technical proposals. The same argument could be made with respect to Rohr's protest. This additional contention is without merit since the RFTP clearly required 14-gage or thicker steel rollers and contained no apparent impropriety which should have been questioned before bid opening.

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While DLA is correct in saying that technical proposals need not comply with all the details of the specifications, the issue here is not the responsiveness of Rapistan's offer but whether the approval of thinner steel for certain rollers constituted a basic change in requirements which should have been communicated to all offerors. Armed Services Procurement Regulation § 3-805.4(a) (1976 ed.) provides as follows:

"When, either before or after receipt of proposals, changes occur in the Government's requirements or a decision is made to relax, increase or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the solicitation.
* * *

While it is primarily for the procuring agency to make the technical determination as to whether a stated requirement is an "essential" one in view of its overall technical needs, it is clearly within the competence of our Office to consider what meanings may be reasonably attributed to solicitation provisions. We have also recognized that there is a limit to the extent to which a competition may be permitted to deviate from the stated specifications. The underlying principle is that the proposed change in specification requirements is of a substantial nature and all offerors should be given the opportunity to submit a proposal on the changed requirements in order to permit competition on an equal basis. In determining the nature of a deviation from stated solicitation requirements, we have looked to the mandatory character of language, the specificity of design detail and the general thrust of the provision from which deviation is to be permitted. See B-178192, supra.

Since (1) section 2.3 of the specifications states that "the equipment shall conform to the minimum requirements set forth in sections 6 and 7"; (2) section 6.1 of the specifications states that "the bidder shall adhere to the following minimum requirements"; and (3) since nine other specification sections state that rollers "[s]hall have a rating of 150 pounds per roller and 1.9" diameter, of 14-gage or thicker steel," we believe that 14-gage or thicker steel was clearly a mandatory Government requirement of the RFTP. We also believe that DCSC's decision to relax the requirement for 14-gage or thicker steel was a basic change in Government requirements that should have been communicated to all offerors.


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In arriving at this decision we take note of the cost impact data provided by Standard and essentially not disputed by DLA. Standard states that the cost saving between the roller it offered and the 16-gage roller offered by Rapistan is approximately \$1 each. Standard also points out that about 30,000 rollers were required. We note that while this may have resulted in about a \$30,000 reduction in Standard's bid price, Rapistan would still have been substantially lower on both CLIN 0001 and CLIN 0002. However, using Standard's data, Rohr may reasonably have been the low bidder on CLIN 0001. Furthermore, we do not agree with DLA's argument that the RFTP emphasized performance requirements, thereby constructively notifying all offerors of the nonmandatory nature of the roller steel thickness requirement. In this regard, we note that in a similar procurement before this one, DLA deemed it appropriate to amend a solicitation to reflect that 16-gage steel rollers might be offered in lieu of 14-gage rollers.

Since DLA intended to satisfy the Government's minimum requirements by substituting 16-gage steel in lieu of 14-gage rollers, which constituted a basic change in the RFTP's mandatory requirements, by letter of today, we are recommending that the Director of the Defense Logistics Agency cancel the IFB and reopen the step one phase of the procurement based on the Government's current minimum needs. See 53 Comp. Gen. 47, supra.

Protests sustained.

Since this decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the House Committee on Government Operations, Senate Committee on Governmental Affairs, and Committees on Appropriations concerning the action taken with respect to our recommendation.


Deputy Comptroller General
of the United States



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

Mike Boyle
Proc I

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MAR 28 1977

The Honorable Jack Brooks
Chairman, Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

Enclosed is a copy of our decision of today concerning the protests of Standard Conveyor Company and Rohr Industrial Systems, Inc. (now RISI Industries, Inc.), relative to invitation for bids (IFB) No. DSA700-76-B-2279, the second step of a two-step procurement, issued by the Defense Construction Supply Center, Columbus, Ohio. In the decision, we recommend to the Director of the Defense Logistics Agency that the second step IFB be canceled and the step one phase be reopened based on the Government's current minimum needs.

This matter is being brought to your attention pursuant to the Legislative Reorganization Act of 1970.

Sincerely yours,

R. F. KELLER

Deputy
Comptroller General
of the United States

Enclosure

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

Wicki Boyle
Proc I

D-157005

MAR 25 1977

The Honorable Abraham A. Ribicoff
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Enclosed is a copy of our decision of today concerning the protests of Standard Computer Company and Inter Industrial Systems, Inc. (now IHI Industries, Inc.), relative to invitation for bids (IFB) No. DCA700-76-S-2279, the second step of a two-step procurement, issued by the Defense Construction Supply Center, Columbus, Ohio. In the decision, we recommended to the Director of the Defense Logistics Agency that the second step IFB be canceled and the step can phase be reopened based on the Government's current minimum needs.

This matter is being brought to your attention pursuant to the Legislative Reorganization Act of 1970.

Sincerely yours,

R.F. KELLER

Deputy
Comptroller General
of the United States

Enclosure

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

Mike Boyle
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D-167885

MAR 29 1977

The Honorable John L. McClellan
Chairman, Committee on Appropriations
United States Senate

Dear Mr. Chairman:

Enclosed is a copy of our decision of today concerning the protests of Standard Conveyor Company and Rahr Industrial Systems, Inc. (now RIZ Industries, Inc.), relative to invitation for bids (IFB) No. DHA788-75-S-1279, the second step of a two-step procurement, issued by the Defense Construction Supply Center, Columbus, Ohio. In the decision, we recommended to the Director of the Defense Logistics Agency that the second step IFB be canceled and the stay one phase be reopened based on the Government's current minimum needs.

This matter is being brought to your attention pursuant to the Legislative Reorganization Act of 1970.

Sincerely yours,

R.F. KEIGER

Deputy

Comptroller General
of the United States

Enclosure

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

Vicki Boyle
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D-187005

MAR 2 1976

Lieutenant General W. W. Vaughan
Director, Defense Logistics Agency

Dear General Vaughan:

Enclosed is a copy of our decision of today concerning the protests of Standard Conveyor Company and Rohr Industrial Systems, Inc. (now RHE Industries, Inc.), relative to invitation for bids (IFB) No. DDAF00-76-D-2179, the second step of a two-step procurement, issued by the Defense Construction Supply Center, Columbus, Ohio. In the decision, we recommended that the second step IFB be canceled and the step one phase be reopened based on the Government's current minimum needs.

As the decision contains a recommendation for corrective action to be taken, it has been transmitted by letters of today to the congressional committees named in section 234 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires your Agency to submit to the named committees within prescribed time written statements of the action taken on the recommendation.

We would also appreciate advice of whatever action is taken on the recommendation.

Sincerely yours,

R. F. KELLER

Deputy

Comptroller General
of the United States

Enclosure

RM



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

Michael Bayle
Level I

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MAR 29 1977

The Honorable George H. Mahon
Chairman, Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

Enclosed is a copy of our decision of today concerning the protests of Standard Conveyor Company and Rohr Industrial Systems, Inc. (now RISI Industries, Inc.), relative to invitation for bids (IFB) No. DSA700-76-D-2179, the second step of a two-step procurement, issued by the Defense Construction Supply Center, Columbus, Ohio. In the decision, we recommended to the Director of the Defense Logistics Agency that the second step IFB be canceled and the step one phase be reopened based on the Government's current minimum needs.

This matter is being brought to your attention pursuant to the Legislative Reorganization Act of 1970.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General
of the United States

Enclosure

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