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The Honorable Charles H. Percy
United States Senate

Dear Senator Percy:

Your letter of May 31, 1973, requested that we examine into complaints from your constituent about procurement procedures of the Naval Ammunition Depot (NAD), Crane, Indiana.

Your constituent, who represents the HLC Manufacturing Company, raised a number of questions concerning the following issues.

- Although a contract for a camera system was terminated because the contractor failed to deliver, no penalty was assessed.
- Because of an ambiguity in the delivery schedule for another procurement for a camera system, NAD judged an HLC bid nonresponsive.
- The specifications were revised on a resolicitation for a camera system in favor of the R. W. Borrowdale Company, an HLC competitor.
- On another procurement NAD issued a request for proposal to only one firm, although other companies were equally capable of supplying the equipment.

Our examination of the records and discussions with agency officials pertaining to these procurements revealed no basis for questioning the agency actions or for concluding that favoritism was involved.

NO PENALTY FOR NONDELIVERY

On June 23, 1969, NAD entered into a contract with the Solid State Equipment Corporation for a camera system. But Solid State could not deliver the system because it could not acquire a light system that met specifications.

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On March 30, 1971, NAD terminated the contract for default at no cost to the Government. NAD told Solid State that it would procure the camera in the open market and would hold Solid State liable for any excess cost if it reprocured the same or similar items.

Because the contracting officer determined that the camera system subsequently procured was substantially different, Solid State was relieved of any liability.

AMBIGUITY IN DELIVERY SCHEDULE

On August 3, 1972, NAD issued an invitation for bids (IFBN00164-73-B-0025) for a microphotography system. It received two bids. R. W. Borrowdale's bid was \$24,470, and HLC's bid was \$29,640. NAD engineering personnel found both bids to be technically responsive. However, the contracting officer noted that HLC's bid was ambiguous because a cover letter to the bid showed a different delivery schedule than that shown in the bid. NAD did not act on the ambiguity at that time because it appeared the low bidder would be awarded the contract.

Shortly after the bids were opened, your constituent visited NAD and examined the Borrowdale bid. He found several points which he believed deviated from the specifications. He told NAD about these deviations and requested that NAD consider them in evaluating the bids. After the bids had been evaluated, he was told on September 26, 1972, that Borrowdale's bid conformed with bid specifications and that HLC's bid had been judged nonresponsive because of its ambiguous delivery schedule.

Nevertheless, NAD requested Borrowdale to respond to and clarify your constituent's complaints about the deviations from specifications. After receiving Borrowdale's response, NAD determined on September 29, 1972, that Borrowdale's bid did not meet the specifications. Since neither bid was responsive, NAD canceled the invitation and told both HLC and Borrowdale that it would resolicit.

Your constituent maintains that an ambiguity in delivery schedule was not sufficient cause to judge the HLC bid non-responsive. We found that the contracting officer had discussed this matter with the Naval Supply Legal Counsel who had advised that the offering of two different delivery schedules constituted an ambiguity and was a valid basis for judging a bid nonresponsive.

We believe there was sufficient basis for judging both the Borrowdale and the HLC bids nonresponsive.

CHANGES IN SPECIFICATIONS

Before writing the original specifications for the microphotography system, NAD engineering personnel talked with HLC personnel and visited a Department of Defense installation to observe an HLC camera system in operation. They concluded that HLC could design a camera system which would meet their needs. NAD procurement records indicate that your constituent and HLC officials believed the bid specifications were based on HLC equipment.

NAD engineering personnel stated that, although they never intended to write the bid specifications in favor of HLC, the specifications were based on the literature of the HLC equipment. Procurement records indicated that the engineering personnel believed three manufacturers were capable of complying with these specifications and that the contracting officer had been assured the specifications were nonrestrictive.

Subsequently, NAD personnel further reviewed the systems proposed by both HLC and Borrowdale and concluded that both could meet their needs. NAD personnel then rewrote the specifications to allow HLC and Borrowdale to compete. The Armed Services Procurement Regulation does not prohibit revising specifications to foster competition after properly canceling an invitation for bids.

We noted 13 differences between the original and the revised specifications and discussed each one with NAD engineering personnel. On the basis of these discussions and our understanding of the technical aspects involved, we concluded that only 2 of the 13 changes were significant. The original specifications provided that the camera system have (1) a movable focal plane and (2) a fixed copyboard. The HLC equipment could comply with these specifications, but the Borrowdale equipment could not because it had a fixed focal plane and a movable copyboard. The revised specifications permitted (1) either a fixed or a movable focal plane and (2) either a fixed or a movable copyboard.

On October 31, 1972, NAD resolicited the procurement of a microphotography system on IFB00164-73-B-0068. HLC and Borrowdale submitted responsive bids. Because Borrowdale's bid was \$24,470 and HLC's was \$28,910, the contract was awarded to Borrowdale.

Although the resolicitation contained revised specifications, the effect of these revisions was only to allow Borrowdale to compete with HLC; the revisions did not favor either Borrowdale or HLC.

The equipment procured under this contract was delivered on July 23, 1973. NAD engineering personnel said the testing to date indicated the equipment was capable of meeting all performance requirements.

LIMITING A REQUEST FOR PROPOSAL
TO ONE COMPANY

Your constituent also questioned NAD's sole-source procurement of certain electronic equipment. He claimed that other companies were equally capable of supplying the equipment.

The records of this procurement showed that engineering personnel of the Naval Ordnance Systems Command had considered several potential suppliers of the type of equipment desired. After examining a number of products from various suppliers, they concluded that only one supplier was capable of meeting the minimum performance requirement.

We did not find any procurement practices which, in our opinion, conflicted with the Armed Services Procurement Regulation or which favored one company.

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We did not obtain written comments from any of the parties discussed in this report; however, we discussed our findings informally with NAD.

We do not plan to distribute this report further unless you agree or publicly announce its contents. Please let us know if you want further details on these matters.

As requested, we are returning copies of your constituent's letters.

Sincerely yours,

[Deputy]



Comptroller General
of the United States

Enclosures - 3



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April 24, 1973

Senator Charles Percy
United States Senate
Washington, D. C. 20510

Dear Senator Percy:

Thank you for your reply to my letter of March 29, 1973, which was written on my personal stationery.

The time has long since past when I could consider the pursuance of this matter good business practice. My interest now is that of a citizen rather than a manufacturer's representative.

Perhaps the best way to familiarize you with the situation to which I referred in my letter is to send you photocopies of some recent correspondence. This correspondence was most recently directed to Paul Dembling, Acting Controller General of the United States.

Following is a brief synopsis of the events concerning what I believe to be an extremely dangerous situation which may prevail throughout the Naval Procurement System or may be isolated to the system as practiced at the Naval Ammunition Depot, Crane, Indiana, (NAD).

1. Sometime about 1970, NAD issued an IFB requesting bids on a very specialized camera for highly technical electronics work.
2. It is my understanding that one response was received and the contract awarded to the responder.
3. HLC Mfg. Co., the company who I represent, refused to submit a quote because they believed that the requirements as listed in the specifications were both impractical and impossible to adhere to.

Senator Percy

April 24, 1973

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4. After more than one year, delivery of that camera was not made, and to the best of my knowledge, no penalty was assessed to the contractor.
5. In mid-1972, NAD contacted HLC, as well as other camera companies, to discuss the building of a camera that could perform the precise functions required for the electronics department.
6. Several visits were made to NAD to discuss the highly technical points involved.
7. During the third quarter of 1972, NAD advertised IFB #N00164-73-B-0025. The specifications as listed in that IFB were almost identical to the recommendations made during the technical meetings held previously.
8. In response to the advertised IFB, two (2) bids were submitted. HLC submitted a bid without deviation from any of the technical data specified. Another company also submitted a bid. These two bids were the only ones submitted to NAD.
9. As HLC's representative, I contacted Crane to learn the disposition of the contract. I was informed that we were high bidder and that all indications pointed to an award being made to the competitive company.
10. I visited Crane and obtained authorization to inspect both of the bids which were submitted. The results of this inspection indicated to me that the competitive bid did not even come close to the specifications as advertised. Actually, we were not even comparing the "same breed of cat". I believe it is important to note that in the competitive bid, not one "exception" was designated, although their bid did not conform in any manner of means to the specifications.
11. As a result of this inspection of the competitive bid, I had my company call to the attention of the "Contracting Officer" the numerous deviations from the specifications. At approximately the same time I announced that I would protest the award if made to the competitive company.

Senator Percy

April 24, 1973

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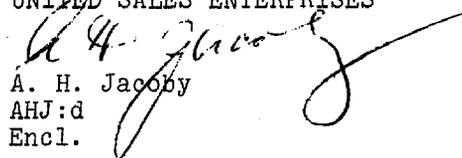
12. In response, we were told by the Contracting Officer at NAD that both bids were being adjudged "non-responsive". The competitive bid was determined to be non-responsive because it failed to meet specifications. The HLC bid was determined to be non-responsive because the Contracting Officer claimed an ambiguity in our bid. The ambiguity dealt with the specifications calling for delivery within 60 days "after award of contract". We (HLC) agreed to this, however, in a covering letter we stated delivery as being 60 days after "receipt of contract". This, was the flimsy excuse that was used to determine the HLC bid as non-responsive, although they conformed to every specification as specified for this highly technical and precise product.
13. In October, 1972, NAD issued a new IFB #N00164-73-B-0068. The specifications in this IFB had been changed from the previously mentioned IFB so that they matched the specifications as submitted in the competitive bid.
14. I objected as a representative, my company objected and protested as the manufacturer, to the frivolous manner in which the specifications for a highly technical instrument had been altered, seemingly to satisfy one bidder as opposed to another.
15. While there is a great deal of other correspondence involved, I believe that which is included with this letter is most pertinent and, therefore, most explanatory.

Senator Percy, it is my opinion that if the change of specifications after intensive investigation is permitted to occur, that it places the whole buying system under a cloud. The system, which is supposedly impartial and impersonal could be twisted and turned to satisfy the whim of every individual involved, it could lead to "influence peddling" at very strategic locations.

I mentioned at the beginning of this long letter, that I have long since passed the point that following up on this matter constitutes good business practice, but as a citizen I am interested in making whatever contribution I can to correcting a precedent which may, some day, develop into something big and ugly. When one considers that the equipment involved is a tool used in the research of extremely fine electronic systems for the Navy, it would seem to me that serious consideration and investigation be given this matter.

Yours very truly,

UNITED SALES ENTERPRISES


A. H. Jacoby
AHJ:d
Encl.



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April 10, 1973

B-177349

Mr. Paul Dembling
Acting Controller General of the United States
Office of the Controller General of the United States
Washington, D.C. 20548

Dear Sir:

The attached photocopy may or may not be relevant to my letter dated April 9, 1973 concerning the fairness and impartiality of the naval procurement system as practiced at the Naval Ammunition Depot, Crane, Indiana.

Perhaps someone can explain why the RFP was limited to 1 solicitation to 1 company when there are other companies equally capable of supplying equal or superior systems. None of these companies have been, to my knowledge, solicited.

Yours very truly,
UNITED SALES ENTERPRISES

A.H. Jacoby
A.H. Jacoby
Owner

AHJ:bs

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U. S. DEPARTMENT
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FRIDAY, MARCH 30, 1973

COMMERCE BUSINESS DAILY

A daily list of U.S. Government procurement invitations, subcontracting plans, contract awards, sales of surplus property and foreign business opportunities.

...ing inventory equipment Command,
4300 Goodfellow Blvd., St. Louis, MO 63120

34 Metal Working Machinery.

* 34--FLEX HARNESS/CIRCUIT BOARD conveyorized spray etcher, 1 ea--FLEX HARNESS CLEANLINE SYSTEM, 1 ea--CIRCUIT BOARD DRYING SYSTEM, 1 ea--CONVEYORIZED STRIPPING SYSTEM, 1 ea--FOB Destination, Pomona, CA. Inspection and acceptance at destination. Deliver all items complete within 115 days from effective date of contract--RFP N00164-73-R-0365--RFP Due Date 13 Apr 73. Request for Proposal has been sent to the following firm. Chemcut Corp., 500 Science Park, State College, PA. See Note 40.

Contracting Officer, Naval Ammunition Depot Crane, IN

List (QPL) at the time set for openings of bids, or award of negotiated contracts.
Revision 2-10-72.

40. This notice does not solicit additional proposals but is issued for the benefit of prospective subcontractors.

41. This notice does not solicit proposals but is issued for the benefit of prospective subcontractors.