



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

B-179048

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OCT 4 1973

MIA, Incorporated
2516 Jacksboro Highway
Fort Worth, Texas 76114

Attention: Mr. Walter L. O'Neil
Executive Vice President

Gentlemen:

This is in reply to your telefax message of June 29, 1973, and subsequent correspondence, protesting against the award of a contract to Raycomm Industries, Incorporated, pursuant to request for proposals No. DAAB07-73-R-C413 issued by the United States Army Electronics Command, Fort Monmouth, New Jersey.

The solicitation was for an 18-month time and materials indefinite quantity type contract for maintenance support documentation for communications, combat surveillance and other types of equipment and systems. Section D of the RFP provided that award would be made to the low offeror based on the sum of group labor prices established by multiplying the Government's estimated man-hours by the composite labor rate quoted for each labor group (such as engineering, technical writing, clerical). The rate for each group was to be determined by averaging the rate specified for each labor category within the group. Of the 21 proposals received, Raycomm's revised proposal in the amount of \$948,353 was low, while your proposal of \$1,063,065 was the third lowest offer received. Following a preaward survey of Raycomm (the incumbent contractor), the contracting officer determined that Raycomm was a responsible offeror and award was made to that firm.

You claim that Raycomm's proposal indicated an engineering labor rate of \$1.50 per hour, and that by acceptance of the proposal the Government "is authorizing sub-minimum wage scale." You also assert that either the Government's estimate of engineering man-hours is inflated or that Raycomm will go bankrupt attempting to perform the contract, and that in either event the Government will lose money,

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You state also that Raycom's failure to quote the minimum wage required for engineers indicates that the signer of the Certificate of Current Cost or Pricing Data submitted with Raycom's proposal committed a criminal act.

The record shows that Raycom did, in fact, specify a composite labor rate of \$1.50 per hour for the engineering group in question (Group 1) and under the provisions of the RFP that rate is to be used when Raycom is paid by the Government for work performed by any individual in the engineering labor group. It does not mean, however, that Raycom may pay its employees less than the statutory minimum wage. The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 206, establishes minimum wage rates to be paid by employers; it is not concerned with the rates charged the Government by employer/contractors. As we stated in a previous case involving both Raycom and this same issue:

"* * * the rates offered the Government by Raycom do not establish the rates which the contractor will, in fact, pay its employees. While Raycom has agreed to charge the Government at the labor rates stated in its final price, any loss occasioned by paying wages in excess of those low rates * * * will be borne by the contractor, not the Government. Our decisions have held that a contractor may not be denied the award merely because he has submitted an unprofitable price. * * * B-173487(1), December 10, 1971."

With respect to your other contentions, the record does not establish that the Government's engineering man-hour estimate was inflated or that Raycom was in a better position than any other offeror to rely on a different figure in preparing its proposal. Also, Raycom's financial ability to perform the contract was considered in detail prior to the award. The procurement file indicates that a thorough financial analysis of the company was made as part of a preaward survey, and that in requesting the survey the contracting officer specifically noted Raycom's "unrealistically low" price. Both the financial analyst and the chairman of the preaward survey team recommended complete award to Raycom, and the contracting officer subsequently determined that Raycom had access to financing necessary "to assure full, complete and satisfactory performance under the contract" and was a responsible offeror. The record affords no basis for our disagreeing with that determination.

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The Army reports that because there was adequate price competition, it did not perform a cost analysis of proposals and, therefore, did not rely on the Certificate of Current Cost or Pricing Data submitted by offerors. ASIR 3-807.3(f); B-173487, supra. It is also reported that the contracting office has no knowledge of any criminal act committed by Raycomm in executing its certification.

Accordingly, for the foregoing reasons, your protest is denied. However, we recognize that Raycomm may have submitted an unbalanced proposal, and we are suggesting in a letter of today to the Secretary of the Army, copy enclosed, that consideration be given to structuring these solicitations to discourage the submission of unbalanced proposals.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States