



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

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B-177763

May 22, 1973

Molecular Energy Corporation
c/o Wachtel, Wiener & Ross
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036

Attention: I. H. Wachtel, Esquire

Gentlemen:

This refers to your letter of May 3, 1973, and prior correspondence from you and your attorneys, Wachtel, Wiener & Ross, requesting clarification and reconsideration of our decision of April 10, 1973. In that decision, we denied your protest against award of a contract to any firm other than Molecular Energy Corporation (Molecular), under invitation for bids (IFB) No. N00017-73-B-1107, issued by the Navy Purchasing Office, Washington, D. C. We have been advised by the Navy that award was made to Yardney Electric Corporation on April 17, 1973.

In our decision of April 10, 1973, we rejected your contention that the Navy improperly excluded the consideration of transportation costs in its evaluation and determination that Yardney Electric Corporation was the low bidder. Your request for reconsideration is based primarily upon the contention that our decision is "predicated on a misconception of the facts regarding Navy's knowledge of its requirements and destinations at all pertinent times involved * * *". In this connection, you state, based upon the statement of a Navy representative at a conference in our Office subsequent to the decision, that the Navy has admitted it knew the destinations at the time the IFB was issued and after bid opening; that the intent of the IFB did not preclude evaluation of transportation costs because the contracting officer failed to document the file as required by ASPR 19-208.4(b) to indicate that it had been determined that it was impracticable to estimate any tentative or general delivery points; and that the Navy did in fact evaluate transportation costs.

Our decision was based upon the conclusion that since the Navy was unable "to estimate with sufficient accuracy the ultimate destination points" and the invitation did not provide for the evaluation of transportation costs, the Navy's determination to evaluate the bids without considering transportation costs was not

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improper. In connection with its position that "it was impracticable to determine either general or tentative delivery points", the Navy pointed out how its projected estimate of destinations for the 8 to 22-month delivery period had changed between the time the IFB was issued and Molecular's protest was filed. This information is a matter of record and was referred to and considered in reaching our decision. It was the Navy's inability to reasonably project the ultimate destination points, as indicated by the changes cited in our decision, which led us to conclude that the Navy had properly determined to exclude consideration of transportation costs as provided in ASPR 19-208.4(b). See also B-150656, March 20, 1963.

Although the terms of the solicitation did not per se preclude the evaluation of transportation costs, we adhere to the conclusion reached in our prior decision that the facts of record support the Navy's position that the evaluation of transportation costs was not contemplated. As noted before, section D did not include transportation costs among the "other factors" to be considered in the evaluation and no listing of destination points for purposes of evaluation was included. While no document was prepared by the contracting officer before the solicitation was issued evidencing the determination not to evaluate transportation costs, we believe the record reasonably supports the conclusion that such determination was in fact made. Otherwise, the invitation would have included appropriate statements providing for such evaluation. Although the invitation did include a requirement for designation of the shipping point, we do not believe this fact may be viewed as requiring the conclusion that evaluation of transportation costs was intended in the absence of more definitive provisions to this effect and in view of the omission of such factor from section D and the lack of a statement of destination points.

As noted in our decision, the Navy admits that it did, in fact, conduct an evaluation of transportation costs based on projected fleet needs at the time the evaluation was made. But, as stated in the decision, it is the Navy's position that this evaluation was conducted at the behest of the contracting officer only to determine if, in fact, Molecular would be low with the inclusion of transportation costs.

In its letter of April 23, 1973, the Navy explains that its representative did not agree with Molecular's position at the meeting in question, but rather he attempted to clarify the Navy's position. In this regard, the Navy states that--

The mere fact that the Navy was in a position to determine battery destination points at any particular moment in time is manifestly irrelevant to the meaningful issue that the Navy was not (and is not) in a position to realistically estimate ultimate delivery points in the future. * * * It is obvious that the Navy could at a particular time establish what the destination points should be at that time for any item of supply. However, we cannot overemphasize the complete lack of merit of such an argument as it pertains to the Contracting Officer's judgment that the destination points were so much a matter of speculation as to make it impracticable for the Command to realistically project where deliveries were to be made from eight (8) to twenty-two (22) months after contract award.

In view of our conclusion that the applicable regulations did not call for the evaluation of transportation costs in the circumstances involved here and since the invitation did not provide for the evaluation of such costs, we believe that an evaluation based upon the exclusion of such factor was not improper.

As indicated in our prior decision, however, we recommended to the Secretary of the Navy that in order to avoid confusion on the part of bidders in the future, solicitations should state in appropriate cases that transportation costs will not be considered in the evaluation.

For the reasons set forth above, our decision of April 10, 1973, is affirmed.

Sincerely yours,

Paul G. Doubling

For the Comptroller General
of the United States