



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

092158

40219

B-178885

November 23, 1973

National Aviation Electronics, Inc.
P.O. Box 222
Oak Creek, Wisconsin 53154

Gentlemen:

We refer to your letter of September 24, 1973, and prior correspondence protesting against any award being made under Solicitation F41608-73-R-GH59, issued on April 12, 1973, by the Directorate of Procurement and Production, Kelly Air Force Base, Texas.

The solicitation in question is for seven Airfield Lighting Test Sets, FSN 6625-600-9903, Type MMI, per Military Specification Mil-T-26898B. The instant procurement came about as a direct result of the Government's terminating for default National Aviation Electronics, Inc.'s (NAE) prior contract (No. F41608-72-C-6720) for these items. In view of this default NAE was not solicited for this reprocurement.

NAE contends that it was arbitrarily and improperly precluded from submitting an offer under the subject solicitation and that the specifications referenced therein are defective.

Upon receipt of your initial letter dated June 8, 1973, we commenced to develop this matter as a routine bid protest. It was not until we received your letter of September 24 that we were made aware of the fact that you had appealed the default termination to the Armed Services Board of Contract Appeals (ASBCA). We have been informally advised by the ASBCA that your appeal, No. 18256, has been set for hearing on the merits for December 12, 1973, in Milwaukee, Wisconsin.

In B-171659, November 15, 1971, copy enclosed, our Office recognized that where, as here, a procurement is for the account of the defaulted contractor the statutes governing procurement by the Government are not applicable. As such, we cannot raise any question with regard to the situation about which NAE complains.

[Protest Against Air Force Contract Award]

716252

B-178885

With regard to the disputed question of whether or not NAE requested a copy of the resolicitation package, we have been informally advised that upon receipt of such a request the Air Force will provide said documents. This right to information, does not, of course, necessarily entitle the defaulted contractor to be considered for award.

For the reason set forth above, our Office must therefore, close its file in this matter.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States