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DECISION



David Hasfurth
^{PII}
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-189071

DATE: October 3, 1977

MATTER OF: Ingersoll-Rand Company

DIGEST:

Protester knew that offeror must have qualified under first step of two-step procurement with one of two models offeror produces. Since protester contends neither model meets specified requirements and information on which conclusion was based was available when notice of acceptable technical offerors appeared in Commerce Business Daily, protest should have been filed within 10 working days after publication.

In May 1977, the Ingersoll-Rand Company (Ingersoll-Rand) protested against an award to the Sullair Corporation, the low bidder under Defense Construction Supply Center, Defense Logistics Agency (DLA), invitation for bids No. DSA700-77-B-0727, the second step of a two-step procurement of wheel-mounted, diesel engine-driven compressors and related material.

Ingersoll-Rand contends the model offered by Sullair does not comply with the first step request for technical proposals (RFTP) since it has not been marketed and produced at the specified noise level for 1 year prior to the date for receipt of proposals.

DLA states that Ingersoll-Rand either knew or should have known of the basis of its protest when the firms submitting acceptable technical proposals were listed in the Commerce Business Daily (CBD) on March 22, 1977. Therefore, DLA contends the protest is untimely since it was filed May 12, 1977, well beyond the 10 days allowed for the basis for protest was known or should have been known.

Ingersoll-Rand contends that it did not know which model Sullair offered in the first step because that was not published in the CBD and DLA does not reveal the contents of technical proposals. Ingersoll-Rand states that it did not know which model Sullair offered until the bids were opened when it concluded that Sullair offered the model 750Q.

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Although Ingersoll-Rand did not know until after bid opening the model on which Sullair qualified, it appears from the record that by March 22, 1977, the date of the CBD notice, Ingersoll-Rand knew that Sullair would have to be offering either its model 750 or 750Q. A letter of July 28, 1977, from the attorney for Ingersoll-Rand states "Ingersoll-Rand knew that Sullair had manufactured a Model 750 compressor for some years" and "Ingersoll-Rand also knew that Sullair had just begun making a new type of compressor, its Model 750Q." Sullair's model 750Q is described in the Ingersoll-Rand March 9, 1976, "Portable Compressor Newsletter" as "their standard compressor enclosed by an additional insulated cover." It also appears that by March 22, 1977, information which served as the basis for its conclusion that the model 750 could not meet the noise level requirement of the RFTP and the 750Q could not meet the 1-year marketing and production requirement was available to Ingersoll-Rand.

In the circumstances, we conclude that the failure of Ingersoll-Rand to protest within 10 working days after the March 22, 1977, publication in the CBD that the Sullair proposal had been found acceptable renders the protest untimely. Therefore, the merits of the protest will not be considered.

Winston J. Dembling
for Paul G. Dembling
General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

David Hasfurth
PL I



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO.

B-189071

October 3, 1977

The Honorable Bill Hefner
House of Representatives

Dear Mr. Hefner:

With regard to your August 17, 1977, letter wherein you express an interest in the Ingersoll-Rand Company protest under Defense Construction Supply Center invitation for bids No. DSA700-77-B-0727, enclosed is a copy of our decision of today on the matter.

Sincerely yours,

Paul G. Denbling
Paul G. Denbling
General Counsel

Enclosure