

DECISION

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

26353

FILE: B-207246.2; B-211811**DATE:** September 28, 1983**MATTER OF:** Ingersoll-Rand Company;
Sullair Corporation**DIGEST:**

1. Neither Government drafting of compressor specification included in prime construction contract nor Government employee's aid in evaluating subcontractor offers is sufficient Government involvement to invoke GAO review of award of subcontract for compressors. Consequently, protest of biased subcontract evaluation is dismissed.
2. Potential subcontractor is interested party to protest restrictiveness of compressor specifications where protest is filed prior to proposal due date of prime contract procurement. Protester has not shown that agency lacked a rational basis for specifications, so protest is denied.

Ingersoll-Rand Company (Ingersoll-Rand) protests a subcontract solicitation for air compressors issued by Hawaiian Dredging and Construction Company (Hawaiian Dredging), the prime contractor performing utilities improvements at the Pearl Harbor Naval Shipyard, Hawaii, for the Department of the Navy (Navy) under contract N62742-82-C-0501. Ingersoll-Rand contends that the compressor specifications are unduly restrictive, and that its quotation was improperly evaluated.

Sullair Corporation (Sullair) protests the award of the subcontract to Atlas Copco. Sullair contends that improper adjustments were made to the price quotations, that bias was shown in the evaluation of Atlas Copco's quotation, and that Atlas Copco's compressors do not comply with the specifications.

We dismiss Sullair's protest in its entirety and we dismiss Ingersoll-Rand's protest in part and deny it in part.

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The Navy issued a solicitation for electrical and mechanical work at the naval shipyard. The successful contractor was to purchase and install four large air compressors as part of the contract performance. The Navy had the specifications for the compressors drafted by a consultant and included in the prime contract solicitation. The proposal due date for that solicitation was April 2, 1982. The specifications permitted only rotary screw-type compressors to be provided. Some time well before the solicitation due date, Ingersoll-Rand, a manufacturer of centrifugal-type compressors, complained to the Navy that the specifications were unduly restrictive.

The Navy reviewed the specifications, determined that they were overly restrictive, and amended the solicitation in that regard in May 1982. In late April 1982, Ingersoll-Rand, apparently having seen the specifications, protested to GAO, arguing that they were still overly restrictive because requirements were imposed on centrifugal compressors far in excess of those imposed on rotary screw compressors. The Navy agreed to review and amend the specifications as appropriate. At that point, Ingersoll-Rand withdrew its protest with GAO.

The Navy again amended the specifications, and Ingersoll-Rand again complained to the Navy that the specifications still unfairly favored rotary screw compressors. By letter of January 27, 1983, the Navy informed Ingersoll-Rand that the specifications would stand in that form. Ingersoll-Rand then filed the present protest with GAO. Sullair filed its protest after the subcontract award to Atlas Copco.

As a preliminary matter, the Navy argues that this is not one of the limited circumstances in which we will review awards of subcontracts, as set forth in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. The Navy argues that other than drafting the specifications setting forth its minimum needs and having approval rights over the subcontractor finally selected, it had no control over Hawaiian Dredging's selection of a subcontractor. The Navy contends that this is not sufficient involvement to invoke our review.

Ingersoll-Rand argues that by drafting the specifications narrowly, the Navy significantly limited potential subcontractor sources. Both protesters argue that by aiding Hawaiian Dredging in its evaluation of

offers, the Navy directly and actively participated in the selection of the subcontractor. The protesters point to an affidavit of a Navy employee stating that he was involved in the evaluation of offers and to the involvement of an employee of the consultant that drafted the specifications. Sullair also argues that GAO should review the subcontract award because the subcontract award is prejudicial to the rights of the Government since Atlas Copco's compressor does not meet the specifications and its offer is not low. The protesters contend that these circumstances are sufficient to invoke our review.

We have held that the Government's drafting of subcontract specifications and involvement in rejecting potential subcontractors for not meeting those specifications are not sufficient involvement in subcontractor selection to invoke our review under the standards enunciated in Optimum Systems, supra. See, e.g., United Lighting and Ceiling Corporation, B-190464, April 4, 1978, 78-1 CPD 267; William M. Bailey Company, Industrial Products Division, B-190682, December 8, 1977, 77-2 CPD 447; Truland Corporation; Compugard Corporation, B-189505, September 26, 1977, 77-2 CPD 226; Structural Composites Industries, Inc., 55 Comp. Gen. 1220 (1976), 76-1 CPD 260. However, those cases also state that potential subcontractors are interested parties for the purpose of protesting the inclusion of allegedly restrictive subcontract specifications in prime contracts. If the protested language is in the solicitation for the prime contract, as here, the protest must be filed prior to the bid opening date or proposal due date of the prime contract solicitation to be timely. 4 C.F.R. § 21.2(b)(1) (1983).

Here, we find that the Navy's drafting of the compressor specifications was not sufficient involvement in subcontractor selection to invoke our review under Optimum Systems, supra. Also, while the Navy did have some involvement in evaluating the quotations, it appears that Hawaiian Dredging did the primary evaluation, and that Navy personnel provided technical assistance and reviewed the evaluation to ensure that the proposed equipment met the specifications for subcontractor approval purposes. That is not sufficient involvement for our review. See United Lighting and Ceiling Corporation, supra. Concerning Sullair's final jurisdictional argument, we will not review a subcontract award outside the limited circumstances set forth in Optimum Systems, which are not present here, unless fraud or bad faith is shown. An allegation that

subcontract approval is prejudicial to the Government is not sufficient. Consequently, Sullair's protest is dismissed. However, Ingersoll-Rand did protest initially to the Navy prior to the proposal due date for the prime contract and renewed its protest in a timely manner each time that the specification was amended. Consequently, we will consider Ingersoll-Rand's protest of the restrictiveness of the specifications with the exception of certain specific complaints that were not timely raised and are discussed below.

Essentially, Ingersoll-Rand argues that the specifications preclude competitive quotes from any manufacturer of centrifugal air compressors and from all manufacturers of rotary screw compressors except Atlas Copco, the awardee. According to the protester, manufacturers of centrifugal compressors are precluded from competing fairly because requirements, which are expensive to meet, are imposed on them that are not imposed on manufacturers of rotary screw compressors. Other rotary compressor manufacturers are precluded from competing fairly because their machines are either too small or too expensive.

The Navy argues that the additional requirements imposed on centrifugal compressors are reasonable because of differences in the design and operating characteristics of the two types of compressors. According to the Navy, its consultant used provisions of American Petroleum Institute (API) Standard 672 for centrifugal compressors for several of the requirements to which Ingersoll-Rand objects. Those provisions are required to ensure long life and reliability. The other requirements objected to by the protester are necessary for ease of maintenance at a reasonable cost, the Navy asserts. The Navy argues that these requirements represent its minimum needs and can be met by a number of manufacturers of both centrifugal and rotary screw compressors, although all manufacturers may not be able to offer their standard machines without some modifications.

The determination of the Government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will

be used in the future. On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208; METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. Therefore, our Office will not question agency decisions concerning those matters unless they are shown to be clearly unreasonable. Particle Data, Inc.; Coulter Electronics, Inc., B-179762; B-178718, May 15, 1974, 74-1 CPD 257. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset agency determinations. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc. -- request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

While needs should be determined so as to maximize competition, we have held that requirements which limit competition are acceptable so long as they are legitimate agency needs, and a contract awarded on the basis of those needs would not violate law by unduly restricting competition. Educational Media Division, Inc., B-193501, March 27, 1979, 79-1 CPD 204.

Ingersoll-Rand complains that the specifications (1) fail to consider compressor efficiency; (2) impose restrictive quality controls on centrifugal compressors, but not on rotary compressors; (3) require that centrifugal casings be axially split; (4) require that coolers be externally mounted and have cooling water inside the tubes; (5) require that centrifugal compressors have an elaborate control panel, while rotary compressors may provide a simple, standard panel; and (6) require that centrifugal compressors have a 3-axis vibration monitoring system. The protester also argues generally that the requirements adopted from API Standard 672 are applicable to the hazardous conditions present in oil refineries, but have no relevance to the use of air compressors in shipyards.

The Navy argues that Ingersoll-Rand's specific objections concerning failure to consider efficiency and requirements for vibration monitoring and an elaborate control panel are untimely, since they were first raised by letter of April 28, 1983. This is because these issues were obvious from the various versions of the specification and should have been raised when the other objections to the specifications were raised.

Ingersoll-Rand does not dispute the Navy's analysis concerning the control panel and vibration issues. Regarding the efficiency issue, Ingersoll-Rand argues that it is not contending that efficiency should have been considered in the specifications, but rather is raising the issue now to show that the Navy's consideration of motor efficiency without considering compressor efficiency was an example of arbitrary and capricious decisionmaking in this procurement.

We agree with the Navy regarding the timeliness of these arguments. As we stated above, protests of obvious alleged solicitation defects must be filed prior to the bid opening or proposal due date of the prime contract. These complaints are clearly of obvious alleged defects in the solicitation and were not filed until long after the appropriate date. We find Ingersoll-Rand's argument concerning the timeliness of the efficiency question unpersuasive. First, Ingersoll-Rand does present the issue as an alleged solicitation defect. Second, even assuming that Ingersoll-Rand is raising the question to show arbitrary decisionmaking, the underlying basis for that assertion is still the untimely contention that efficiency should have been considered in the solicitation.

We deny the protest on the merits of the other three alleged specification defects. We find that while Ingersoll-Rand and the Navy disagree strongly concerning these points, the protester has not shown that the Navy lacks a reasonable basis for its statement of needs.

Generally, Ingersoll-Rand argues that API Standard 672 is geared to the hazardous conditions present in refinery situations and is not applicable to the shipyard use here. The Navy contends that API Standard 672 is applicable to centrifugal compressors for plant and air instrument use, which is essentially the use intended for this subcontract. According to the Navy, portions of API Standard 672 have been incorporated into the specifications, not because of their applicability to hazardous condition use, but because they are necessary to ensure long term reliability.

We agree with the Navy that the specifications adopted from API Standard 672 are more related to reliability than to specific operating conditions. Ingersoll-Rand has not shown that refinery use for air compressor is so different from shipyard use that it is unreasonable to adopt standards relating to quality and long term reliability.

Concerning quality control, the specifications impose different, allegedly more stringent, requirements for shafts, impellers, critical speed and vibration and balance on centrifugal compressors than on rotary screw compressors. According to the Navy, this is necessary mainly because centrifugal compressors operate at 30,000 revolutions per minute (RPM), while rotary screw compressors operate at 7,200 RPM, and because they are more subject to out-of-balance problems than are rotary screw compressors. These specifications are adopted from API Standard 672 and, according to the Navy's consultant who drafted the compressor specification, represent the accumulated experience of compressor users and manufacturers as to what is necessary to ensure long term reliability.

Ingersoll-Rand argues that by focusing on rotative speed alone, the Navy has selected one fact supporting its position, but has ignored other attributes of the two types of compressors which would have resulted in equal requirements for both types of compressors. For example, the protester points out that linear tip speed is more important than rotative speed. Also, Ingersoll-Rand states that the clearances between rotating parts and between rotating and stationary parts are 10 times greater in centrifugal compressors than in rotaries. Additionally, the mass of the rotating parts in centrifugal compressors is much less than the mass of those parts in rotaries.

In a response, the Navy points out that tip speed was considered and is substantially greater for centrifugals versus rotaries. Otherwise, the Navy stands on its position concerning the importance of speed and the applicability of API Standard 672.

We find the Navy's position to be reasonable. The Navy has determined, based on the opinion of its consultant and the API, that the speed difference between the two types of compressors is sufficiently important to require certain standards for centrifugal compressors which are not imposed on rotaries. Essentially, Ingersoll-Rand has admitted that speed is important, but has made unsupported statements that clearances and mass are equally important. The technical decisionmaking that is involved here is precisely the sort of function that is within the discretion of a contracting agency, subject only to the standard of reasonableness. The Navy provided a reason for its requirements in this regard and has substantiated it.

Ingersoll-Rand's comments show a difference of opinion with technical judgment, but do not rise to the level of evidence showing that the judgment is unreasonable.

Concerning the requirement for an axially split casing, the Navy's consultant states that a machine with a radially split casing must be completely opened for even minor repairs or inspections, and that casing gaskets must be replaced each time that the machine is opened. Also, according to the Navy, the gaskets are mated blind, which can cause problems with sealing. Additionally, the Navy contends that the cost of opening and closing a radially split casing is six times the cost of opening and closing an axially split casing. In an affidavit, a Navy employee stated that Ingersoll-Rand's service department advised him that opening and closing a radially split casing took 134 man-hours. Consequently, the Navy has specified axially split casings for easier, lower cost maintenance.

Ingersoll-Rand contends that its radially split casing is just as easy to open and close as an axially split casing and takes about 8 man-hours to open and close. The protester also argues that the gaskets are simple to replace and do not present problems with alignment or sealing. Ingersoll-Rand denies any knowledge of its service department advising the Navy that its compressor takes 134 man-hours to open and close. In support of its position, the protester has provided a videotape showing two men opening one of its compressors in approximately 2 hours and a statement from its west coast service manager concerning the issue.

We think that Ingersoll-Rand has shown satisfactorily that there is no significant time disadvantage in opening and closing its radially split casing. However, that alone does not negate the Navy's reasons for requiring an axially split casing. Even though Ingersoll-Rand's casing may be relatively easy to open and close, as a group, radially split casings might be more difficult to open and close. Also, Ingersoll-Rand has not rebutted the Navy position that machines with radially split casings must be opened completely for even minor repairs other than to assert that Ingersoll-Rand machines do not often need repairs. Also, while Ingersoll-Rand disagrees with the Navy concerning potential problems associated with replacement of the gaskets, that disagreement is not sufficient evidence to overturn the Navy's rationale.

Finally, the Navy required external, water-in-tube coolers primarily for ease of maintenance, convenient testing, easy replacement and isolation from the impeller and diffuser chambers. According to the Navy, over a period of time, cooling water deposits solids onto the heat exchange medium. With the required type of coolers, maintenance requires only that the end plates be unbolted, that a rod and brush be run through the tubes, that tubes be flushed and that the end plates be rebolted. The Navy states that the same maintenance for coolers using water outside the tubes requires disconnecting the pipes, removing end plates, removing tubing bundles, cleaning between tubes by brush or chemicals and then reattaching the entire assembly. Also, the Navy points out that Ingersoll-Rand is the only manufacturer not using the required design.

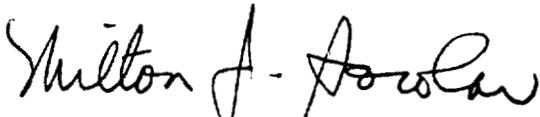
Ingersoll-Rand contends that its coolers are rarely cleaned mechanically, as described by the Navy, but rather are either backflushed with cooling water or chemically cleaned with a mild acid solution. Both methods are simple and efficient.

Again, we find that Ingersoll-Rand has not shown the Navy's requirement to be without a rational basis. Apparently, the coolers used by Ingersoll-Rand are occasionally cleaned by mechanical means, which appear to be more thorough. Additionally, Ingersoll-Rand has not rebutted the Navy's other reasons for using externally mounted, water-in-tube coolers.

While it appears that competition was restricted because three of five offerors were found to be technically unacceptable, this does not constitute an undue restriction on competition because the requirements represent valid minimum needs. In this regard, we note that no other offeror protested that the requirements were restrictive. Also, it appears that the offerors found to be technically unacceptable offered their standard compressors without attempting to modify them to meet the specifications. There is no requirement that specifications must be drafted to permit potential offerors to offer their standard products. See, e.g., Big Bud Tractors, Inc., B-209858, February 4, 1983, 83-1 CPD 127.

Since Ingersoll-Rand's offer was rejected because it did not conform to requirements that we have found to be acceptable, its protest of the evaluation of its price quotation is academic and will not be considered.

Protests dismissed in part and denied in part.

for 
Comptroller General
of the United States