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DECISION



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

FILE:

B-218388

DATE: May 6, 1985

MATTER OF:

Patterson Pump Company

DIGEST:

1. Where prior decision concluded that descriptive data requirement in canceled solicitation was not a material factor for award purposes and, therefore, could not support findings of nonresponsiveness on which cancellation was based, conclusion applies to all descriptive data requirements in canceled solicitation that were deleted from resolicitation.
2. Bid preparation costs, premised on allegedly arbitrary issuance of resolicitation while protest was pending, may not be reimbursed since agency is not precluded from resoliciting procurement merely because protest was filed against cancellation of original solicitation.

Patterson Pump Company (Patterson) protests the United States Army Corps of Engineers' (Corps) implementation of our recommendation in Patterson Pump Company, B-216133, B-216778, Mar. 22, 1985, 85-1 CPD ¶ 333. We recommended that the Corps make an award to one of the three lowest bidders (as appropriate) under the original solicitation (invitation for bids No. DACW27-84-B-0058) for electric motor-driven vertical storm water pumps, rather than under the resolicitation of that procurement.

The original solicitation was canceled by the Corps because all bids received had been rejected--the high bid as being excessive in price and all others, including Patterson's third low bid, as being technically nonresponsive for failure to submit conforming

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descriptive data. We reached our conclusion on the basis that the descriptive data requirements contained in the original solicitation were deleted from the resolicitation, thereby evidencing--for the purposes of the Patterson protest against rejection of its bid under the original procurement--that the submission of descriptive data was not a material factor for the purposes of bid evaluation and award.

The Corps proposes, under our decision, to make award to the low bidder on the original solicitation, Reddy-Buffaloes Pump, Inc. (R-B). It also notes the reasons why the second low bid, that of the Ingersoll-Rand Company (Ingersoll-Rand), was rejected. The R-B bid had been rejected because it failed to contain data showing typical performance curves for the pumps/motors as well as data showing the weights of the major components of the motors, such as the rotors, stators, and bearings. Although this data was lacking, R-B's bid did not take exception to the solicitation specifications.

Patterson contests the determination to make award to R-B and the allegedly erroneous interpretation the Corps placed on our decision in order to reach this determination. Our decision dealt, Patterson contends, only with the descriptive data requirement for typical performance curves set forth in the following requirement:

"NOTE The Contractor shall supply outline drawings of pumps & motors & typical performance curves with the bid. Drawings shall include weights & dimensions of various components."

Patterson asserts that the Corps erroneously interprets our decision to include the omission of other information, such as weights and dimensions.

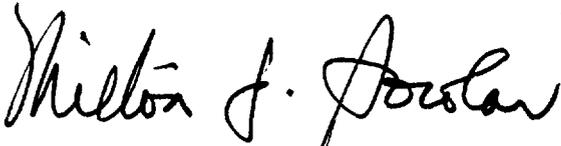
We agree with the determination of the Corps to make award to R-B. In our March 22, 1985, decision we held, citing Sulzer Bros., Inc., and Allis-Chalmers Corp., B-188148, Aug. 11, 1977, 77-2 CPD ¶ 112, that a solicitation warning that the failure to comply with a descriptive literature/data requirement will result in rejection of

bids may be ignored where the literature/data is not actually needed for bid evaluation and, therefore, is not material. While, in our decision, we focused on the requirement for typical performance curves, our conclusion would apply equally to all descriptive data requirements originally in invitation for bids No. DACW27-84-B-0058, inasmuch as they were all deleted from the resolicitation. Consequently, the literature/data does not appear to have been needed for evaluation and award.

Accordingly, we deny Patterson's protest.

Ingersoll-Rand, in commenting on Patterson's protest, suggests that it be reimbursed the costs of preparing its bid on the resolicitation. Ingersoll-Rand believes that no resolicitation should have been issued prior to a resolution of the Patterson protest on the original solicitation. We do not agree with this suggestion. A protest against the cancellation of a solicitation does not prevent an agency from resoliciting the procurement. Winandy Greenhouse Company Incorporated, B-208876, June 7, 1983, 83-1 CPD ¶ 615.

Consequently, there is not a basis upon which we might award bid preparation costs to Ingersoll-Rand.

for 
Comptroller General
of the United States