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**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: LSL Industries, Inc.

File: B-239486

Date: September 10, 1990

V. Jay Luthra for the protester.
Richard P. Welch for Welcon, Inc., an interested party.
E.L. Harper, Department of Veterans Affairs, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation requires submission of a bid sample but fails to list the specific characteristics for which the bid sample is to be examined, rejection of a bid because the accompanying bid sample did not meet a specification requirement would be inappropriate.

DECISION

LSL Industries, Inc. protests the award of a contract to Welcon, Inc. under invitation for bids (IFB) No. M1-80-90, issued by the Department of Veterans Affairs (VA), for patient irrigation kits. **LSL, the second-low bidder,** contends that Welcon's low bid should have been rejected as nonresponsive and thus that LSL is entitled to the award.

We deny the protest.

The irrigation kits called for by the IFB must be sterile and disposable and consist of a catheter tip syringe, plastic tray or basin, a solution container, and a water-proof underpad. The IFB required the bidders to furnish bid samples with their bids so that the contracting agency could test the offered items to determine whether they complied with all the characteristics listed for examination in the solicitation.

Four bidders responded to the solicitation. The agency found that only two bidders, LSL and Welcon, had submitted acceptable bid samples. Since Welcon's bid prices were

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lower than LSL's, the agency awarded the contract to Welcon. LSL's protest to our Office followed.

LSL first challenges the VA's evaluation of Welcon's bid sample, asserting that, based on its inspection of the sample, Welcon's bid is nonresponsive because the interior diameter of the syringe opening measures less than the specification's minimum 3/16 inch requirement. The protester also argues that the awardee's bid is nonresponsive because the specifications require sterile products and the awardee's bid sample package was marked "not sterile."

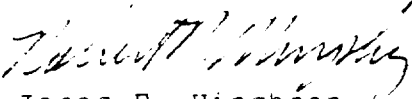
It is the agency's responsibility to evaluate bid samples, and we will not object to the evaluation unless the record establishes that there is no reasonable basis for it or unless the samples were not evaluated in accordance with the requirements of the purchase description. ATD-American Co., B-231794, Oct. 18, 1988, 88-2 CPD ¶ 364.

LSL contends that the agency's use of a metal ruler, instead of vernier calipers, to measure the catheter's interior diameter was arbitrary because the accuracy of that method depends on lighting conditions and the examiner's vision. The agency states that using a metal ruler calibrated to sixteenths was an appropriate and reasonable method to test whether the interior diameter of the catheter tip measured a minimum of 3/16 inch because 3/16 inch is easily distinguishable to the naked eye. In this regard, the agency contends that measuring by vernier calipers, contrary to the protester's suggestion, is more likely to cause an inaccurate reading than measuring by metal ruler, since the pressure from the calipers tends to stretch the plastic syringe.

Under the solicitation here, it would not have been proper for the VA to reject Welcon's bid sample for either reason put forth by the protester. Federal Acquisition Regulation § 14.202-4(b) provides that contracting agencies may only require bid samples when there are characteristics of the product offered that cannot be described adequately in the specification or purchase description. In this regard, the requirement for bid samples would be appropriate for products that must be suitable from such standpoints as balance, facility of use, general "feel", color, or pattern. See FAR § 14.202-4(c). Thus, while a sample might have been required to measure compliance with, for example, the "workmanship" provision of the specification, the requirement of a bid sample for measuring compliance with such an objective characteristic as the specific dimension set forth in the specification is inappropriate.

The regulations provide that once a contracting agency properly requires a bid sample to measure compliance with characteristics other than those that can be described adequately in the specification, the agency may also measure compliance with any other required characteristic, whether or not such characteristic is adequately described in the specifications. FAR § 14.202-4(b)(3). However, bid samples may only be examined for characteristics listed in the solicitation for examination. See FAR § 14.202-4(b)(3). Here, the VA did not list in the IFB any specific characteristics for which the sample was to be examined.^{1/} Accordingly, neither sterility nor catheter dimension was appropriate for sample evaluation.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} Despite the absence of any listed characteristics, the solicitation contained FAR § 52.214-20, entitled "Bid Sample", as required by FAR § 14.201-6(a)(1), a clause which provides that samples will be "tested or evaluated to determine compliance with all the characteristics listed for examination in this solicitation."