



## COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-176421

JAN 31 1973

Cheston Company  
65 Indel Avenue  
Rancocas, New Jersey 08073

Attention: Mr. Alan W. Fuller  
Product Manager  
Pelton Division

Gentlemen:

This is in reference to your protest telegram dated July 5, 1972, concerning the failure of the Department of the Army, Mobile District, Corps of Engineers, to award you a contract under solicitation DAGWOL-72-2-0075 for governors for hydraulic turbines for the Carriers Project in Georgia.

Only two bids were received when bids were opened on April 13, 1972. Your bid was in the amount of \$468,760, whereas Woodward Governor Company's bid was \$417,175. On April 14, by telegram, you alleged that Woodward did not furnish sufficient descriptive literature in its bid. On April 24, 1972, you were informed by the Corps of Engineers that the descriptive material submitted by Woodward was in compliance with the specification terms. On April 25, 1972, you informed the Corps of Engineers that you were filing a before-award protest on the same grounds. After the protest was denied on June 22, 1972, by the Office of the Chief of Engineers, the contract was awarded to Woodward for \$417,175.

Your protest centers around two items required by the IFB. One is the pump-turbine gate position optimizing control and the other item is the turbine eighty percent speed-no-load mechanism.

It is your contention that Woodward failed to supply descriptive literature for these two items according to the requirement stated in paragraph 22 of the General Instructions of the IFB. This paragraph provides in part:

"22. REQUIREMENT FOR DESCRIPTIVE LITERATURE. (a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must

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be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as specified in (c) below.

"(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids. Bids will be evaluated strictly on the basis of the information submitted with the bid. If bidders submit standard drawings and/or standard published descriptive data for their product, any modification required and intended by them to show compliance of the offer with the requirements of the specifications shall be clearly indicated thereon, and any inapplicable description or data shall be deleted. Bidders are cautioned that if a bidder imposes a restriction that any of the required data may not be publicly disclosed, such restriction renders the bid nonresponsive if it prohibits disclosure of sufficient information to permit competing bidders to know the essential nature and type of the product offered or those elements of the bid which relate to quantity, prices and delivery terms.

"(c) In accordance with (a) above, the following information and descriptive data shall be furnished: \* \* \*

"(2) Drawings and Descriptive Data:

\* \* \* \* \*

"b. Schematic diagrams and drawings of the speed governing systems together with a written description clearly explaining the principles of operation. The diagrams and descriptions shall include details on the method of providing automatic and manual control and the means of adjusting the maximum rate of movement of the wicket gates."

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It is your contention that the complained of items relate to "speed governing systems" and their "automatic control" for which schematic diagrams, drawings and written descriptions are specifically required by the descriptive literature clause and you point out that Woodward's bid did not describe these items other than to include them by name in an index sheet. You do not, however, contend that Woodward failed to submit adequate descriptive literature relating to "speed governing systems" or their "automatic control" as those terms relate to other paragraphs of the specifications. You further contend that the Corps of Engineers could not waive the absence of descriptive literature for these items because it did not comply with the provisions of paragraph 2-202.5(e) of the Armed Services Procurement Regulation (ASPR) for waiver of descriptive literature. Finally, it is your view that the failure of Woodward to furnish this literature violated the requirements of the solicitation descriptive literature clause in that it "imposed restrictions which prevented the disclosure of sufficient information to permit competing bidders to know the essential nature and type of product offered."

Woodward contends, on the other hand, that it complied with the solicitation requirements. It states that one or both of the devices in question have been supplied in seven other projects and were therefore thought by it to be standard auxiliary devices for which no literature was required. Woodward denies having imposed any restrictions on public disclosure of data submitted with its bid. It is the position of the Corps of Engineers that the gate position optimizing control feature and the turbine eighty percent speed-no-load mechanism represent "auxiliary devices related to the governing system" for which descriptive literature was not necessary in order to determine bidder compliance with speed governing system and automatic control requirements. The basis for this position was set forth in a Corps of Engineers supplemental report as follows:

"\* \* \* The devices in question are really completely separate from the speed-governing systems. The pump-turbine gate position optimizing control only operates when pumping. The unit speed is controlled by system frequency applied to the synchronous motor-generator operating as a motor and in this mode of operation the governor does not control unit speed. The gate position optimizing control sets the gate position for pumping for maximum efficiency based on the pumping head.

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"The 80 percent speed-no-load mechanism also only operates when the governor is not controlling speed. The generators are used to start the generator-motors as motors for pumping at Carters. The initial starting sequence before the generator and motor are connected together requires the generator to be operating at 80% speed. This device is used to set the initial generator speed and hold the turbine gates in this fixed position after the generator and motor are connected together so that the generator will slow down and motor speed up with the transfer of kinetic energy between units. Neither of these devices are part of the speed governing systems or automatic and manual control of the governor except that they are located on the governor and perform their functions using part of the basic governor speed-governing equipment."

It is concluded, therefore, that Woodward submitted adequate descriptive literature with respect to speed governing controls generally to indicate compliance with specification requirements even though schematic diagrams, etc., were not furnished with respect to the two devices of which you complain.

In our decision B-162403, February 2, 1968, it was stated, while holding that our Office would not interfere with the Corps of Engineers decision concerning the adequacy of descriptive data in that case, that:

"Whether the quoted information is adequate for the purpose intended is essentially an engineering determination. We have recognized the primacy of the using agencies in making such determination. See 17 Comp. Gen. 554, 557. In the absence of patently arbitrary acts, we will not disturb the purely technical judgments made by the procuring activities in the course of establishing specifications and of determining compliance therewith. \* \* \*"

Similarly, in our decision B-161466, July 24, 1967, we held that:

"\* \* \* Where, as here, a good-faith explanation is given by the contracting agency that the data met the invitation requirements, our Office will not substitute its judgment for that of the agency absent overriding evidence of arbitrary or capricious action. This rule also has been applied with respect to the adequacy of the data submitted pursuant to the terms of an invitation. 43 Comp. Gen. 77."

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Because there has been no showing of arbitrary or capricious action by the contracting officer, we must conclude that his determination that Woodward furnished adequate descriptive literature is not subject to question by our Office. Further, since the Woodward literature was determined to be adequate, the question of waiver is not involved. Finally, with respect to your contention that Woodward has imposed restrictions which prevented the disclosure of sufficient information to permit competing bidders to understand Woodward's product, we note that the portion of the descriptive literature clause on which this contention is based has reference to the imposition of a restriction by a bidder on disclosure of literature required to be submitted with the bid and actually so submitted, not to a situation, as here, where certain literature has been determined not to be required.

In view of the foregoing, the protest is denied.

Although we do not conclude that the descriptive literature clause in this instance violated the requirement of ASPR 2-202.5(d) that the "invitation for bids shall clearly state what descriptive literature is to be furnished" since in our opinion the portion of the clause quoted earlier was reasonably explicit with respect to its requirement for "speed governing systems" literature, we are suggesting by letter of today to the Secretary of the Army that in future similar procurements consideration be given to calling out in the descriptive literature clause the actual numbered specification paragraphs for which literature is required.

Very truly yours,

Paul G. Dembling

For the Comptroller General  
of the United States