

DECISION



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

PL-1

10,944

FILE: B-193693

DATE: August 3, 1979

MATTER OF: Lanier Business Products, Inc.--

[Request for Reconsideration]

DIGEST:

1. Upon reconsideration, GAO will consider information available to procuring activity concerning its legitimate needs not submitted during pendency of protest.
2. Where legitimate needs of Government can be satisfied from only single source, law does not require that those needs be compromised in order to obtain competition.

In the matter of Lanier Business Products, Inc., B-193693, April 3, 1979, 79-1 CPD 232, we sustained Lanier's protest because the Interstate Commerce Commission (ICC) had failed to show a need for the background mode duplicating requirement (specification 6) and the subscript, superscript on screen display requirement (specification 12) for text processing equipment. We recommended revision of the specifications and resolicitation.

The ICC requested reconsideration of our decision and submitted detailed information concerning the propriety of its specifications. We withdrew our recommendation; however, we suggested that the ICC review the need for the "on screen" requirement before it utilizes it again for any future procurement. Interstate Commerce Commission--Reconsideration, B-193693, June 11, 1979.

Lanier Business Products, Inc. (Lanier), now requests reconsideration of our June 11, 1979, decision. In urging reconsideration, Lanier states that the detailed support submitted by the ICC was not new material. In fact, the rationale for the specifications provided by the ICC was submitted in conjunction with another protest filed by Lanier, i.e., Lanier Business Products, Inc., et al., B-192432, February 9, 1979, 79-1 CPD 88. Hence, the ICC failed to comply with the Bid Protest Procedures for reconsideration since the ICC's information was previously considered. See 4 C.F.R. § 20.9(a) (1979).

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Lanier makes the following arguments. Notwithstanding the ICC's failure to comply with the Bid Protest Procedures, the Comptroller General considered the material and reversed his decision. In so doing, the Comptroller General committed a gross error of law. In effect, the Comptroller General has announced two different rules for considering requests for reconsideration. The only precedent cited by the Comptroller General for this double standard is a case which contains no legal rationale for such a discriminating practice and which allows Federal agencies as many opportunities as they need to substantiate their positions regarding a protest. See The Raymond Corporation; Air Force--requests for reconsideration, B-188277, September 16, 1977, 77-2 CPD 197. A protester is denied this opportunity. If this is the rule, the Bid Protest Procedures should be revised to reflect this double standard.

Even if the ICC has the right to have the record reopened--pursuant to some unwritten rule--Lanier contends that ICC's submission does not support its assertion that specification 6 is not unduly restrictive. The Comptroller General simply accepted the ICC's statement regarding specification 6 at face value when in fact impartial ICC experts found that the specification was unduly restrictive. Further, the Comptroller General did not consider Lanier's earlier allegation that only the awardee could submit a responsive bid.

For the reasons stated below, Lanier's request for reconsideration is denied.

Contrary to Lanier's assertion, the data submitted by the ICC in support of its request for reconsideration was not previously considered by this Office in connection with Lanier's protest of the ICC specifications. The specific data submitted by the ICC in support of its request for reconsideration was available during the pendency of Lanier's protest of ICC's specifications but ICC did not submit it. It may have been

submitted in connection with another protest filed by Lanier concerning specifications utilized by an ICC consulting firm, but it was not part of the record regarding Lanier's protest of the ICC specifications set forth in ICC solicitation No. 79B-0001.

Upon reconsideration, our Office will consider data provided by the procuring activity concerning its legitimate needs which was available but not submitted by the procuring activity during our consideration of a protest. While this is an exception to the Bid Protest Procedures, we do so because we do not believe that a contracting agency should have to purchase something not meeting its needs simply because it has failed to furnish a basis supporting its needs when one does exist. Although the exception is not stated in the Bid Protest Procedures, the practice has been established by prior decisions. See citations in Interstate Commerce Commission--Reconsideration, supra.

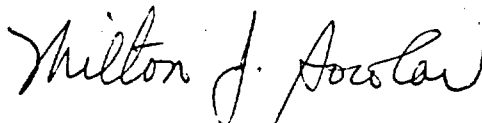
When the need for the requirements in a solicitation is unsubstantiated, we will find that the solicitation is defective and, even though bids have been opened, a new solicitation with proper substantiation must be issued. Where the contracting agency had a basis for the requirements which it did not rely upon, it might utilize that basis in issuing a new solicitation and, if proper, the solicitation would stand. In permitting the contracting agency to furnish the substantiation in support of the original solicitation, there is avoided an unnecessary process which might turn the procurement into an auction if there was a proper basis for the original solicitation. Therefore, we believe it was appropriate for us to permit the ICC to furnish a justification for the solicitation after the original decision.

We neither accepted the ICC's statement regarding the reasonableness of its specifications at face value nor did we disregard the statement of the ICC's experts. On the contrary, our analysis indicated that the

simultaneous utilization of background and foreground modes as required by specification 6 would help achieve the ICC's stated objective of making the written communications process more efficient.

As indicated, Lanier contends that only the awardee could submit a responsive bid. Assuming arguendo that this assertion is correct, it is of no consequence. In this regard, we have held that where the legitimate needs of the Government can be satisfied from only a single source, the law does not require that those needs be compromised in order to obtain competition. California Microwave, Inc., B-180954, September 24, 1974, 74-2 CPD 181; Johnson Controls, Inc., B-184416, January 2, 1976, 76-1 CPD 4.

Based on the foregoing, our decision of June 11, 1979, is sustained.



For The Comptroller General
of the United States