

DECISION



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

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FILE: B-184154

DATE: March 8, 1976

MATTER OF: Ludell Manufacturing Company; Columbia Laundry
Machinery Company; Super Laundry Machinery Company

DIGEST:

1. Protests against awards of subcontracts by prime contractors are not for consideration unless they are actually protests against Government specifications and drawings on project.
2. Even if VA solicitation for laundry facility was restrictive in that VA refused to bear cost of redesign to accommodate protester's equipment, protester was not prejudiced by restriction because delay in furnishing information regarding its equipment contributed to prime contractor's decision to select another supplier and it cannot be said that it failed to obtain contract solely because of restriction in solicitation.
3. Where protester's laundry equipment has not been proven by actual "in use" operation in either commercial or institutional laundry and specifications require the equipment to be in satisfactory and efficient operation on three installations similar to immediate project for 1 year, specification requirement precluding protester's equipment is not unduly restrictive, since qualification provisions are appropriate to assure that equipment meets requirements.
4. Decision whether to procure by means of total approach as opposed to separate procurements is matter for procuring agency to determine.

Ludell Manufacturing Company (Ludell), Columbia Laundry Machinery Company (Columbia), and Super Laundry Machinery Company (Super) protest an award to the American Laundry Machinery Company (American) for laundry equipment by B. B. Andersen Construction Co., Inc. (Andersen), prime contractor with the Veterans Administration (VA) for project 686-050, the consolidated laundry facility at Leavenworth, Kansas. The gravamen of the protests is that the VA specifications and drawings for the laundry facility are so restrictive as to eliminate all but American from competition.

On June 9, 1975, Ludell protested to this Office on the basis that "[r]estriction of specifications prevents quoting on all equipment as one supplier of a specific piece of machinery [American] will not quote or sell to us for resale." After American made the equipment available and one of the restrictive items was removed from the solicitation, Ludell withdrew the protest. In the bid opened on June 10, 1975, Andersen, the low bidder, named Ludell as the supplier of the laundry equipment. On July 30, 1975, Andersen was awarded the contract for the project, but it subsequently switched to American for the laundry equipment.

The facts are in dispute as to whether Ludell submitted all necessary drawings and literature to Andersen to determine if its equipment complied with the specifications. The record contains copies of correspondence requesting additional information from Ludell concerning the proposed equipment. The record also indicates that if Ludell's equipment were used modifications to the building would be necessary. On August 11, 1975, Andersen informed Ludell that the contract for the laundry equipment was awarded to another supplier. Andersen stated that its decision to change suppliers was based upon Ludell's failure to submit information needed for a complete review of its equipment.

Thereafter, Ludell and Super filed protests with this Office on August 18, 1975. Columbia filed its protest on September 15, 1975. Both Ludell and Columbia have protested on the same basis, i.e., restrictiveness of the VA specifications and drawings. Super has not submitted the details of its protest.

On January 15, 1976, a conference on the protests was held at the request of Ludell. In accordance with section 20.7 of the Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), an invitation to attend was extended to all interested parties. At the conference, Ludell (the only protester to attend) highlighted its argument that the specifications and drawings are restrictive.

This Office will not ordinarily consider protests against the awards of subcontracts by prime contractors of the Government. Optimum Systems, Inc., 54 Comp. Gen. 767, 75-1 CPD 166. However, although the protests in this case are nominally against the prime contractor, they are actually protests against the VA specifications and drawings on the project. Nevertheless, it is not necessary to reach that point in the Ludell protest.

Essentially, it is Ludell's position that the VA specifications and drawings for the structure and utilities of the building were designed for the installation of American laundry equipment and that although the VA was willing to permit a redesign to accommodate Ludell, it would not bear the cost of the redesign. It is the refusal of the VA to bear the cost of redesign that Ludell contends makes the specifications and drawings restrictive.

However, the selection of American by Andersen was not based on that aspect alone. In the letter of August 11, 1975, Andersen advised Ludell that the decision to select another supplier also was based on the fact that Andersen had been unsuccessful for 2 months to obtain from Ludell all the information needed for a complete review of the equipment. Andersen indicated that, if Ludell was so slow in furnishing the basic submittals, it anticipated that it might have additional problems with Ludell when it came to obtaining detailed drawings and the equipment itself.

Thus, Andersen's determination not to use Ludell appears in large measure to have been the result of its delay in complying with information requests. Ludell's complaint that the solicitation was restrictive appears to have been made only after Andersen decided to employ another supplier.

Therefore, even if the solicitation was restrictive for the reason suggested by Ludell, it was not prejudiced by the restriction because its delay in furnishing information contributed to Andersen's decision to select another supplier and it cannot be said that it failed to obtain the contract for the equipment solely because of restriction in the solicitation.

Columbia asserts that the requirement in the VA specifications for a shellless washer, i.e., one in which both the material to be washed and the washing fluid is placed in a cylinder and the entire system rotated to secure agitation, does not take into account the alternative system embodied in the Milnor machine. In the Milnor

system the material to be washed is placed in a perforated cylinder and the washing fluid is contained in a shell surrounding the cylinder. Automatic loading and unloading is obtained by tilting the machine one way to receive linen and the other way to discharge the washed material. The machine is level during the wash and rinse cycles for better mechanical action. The same machine also performs the extracting function by centrifugal action after the washing or rinsing fluid has been drained from the shell.


The VA, in its report, states:

"The equipment proposed by the Columbia Laundry Machinery Company, Kansas City, Missouri, consisted of a new type washer/extractor built by Pellerin Milnor Corporation which supposedly can be automated. However, to the knowledge of the VA, this equipment has not been proven by actual 'in use' operation in either a commercial or institutional laundry in this country. The VA believes this system does offer some of the potential claimed by the manufacturer and on June 30, 1975, the VA negotiated a sole source purchase of this equipment for a complete laundry at another facility for the purpose of testing the system." (Emphasis added.)

In this regard, the laundry equipment specification section 500-2, "Qualifications," provided in paragraph A.3. for the manufacturer's product to be in satisfactory and efficient operation in three installations similar to the immediate project for 1 year. We have indicated that similar provisions are appropriate to assure that laundry equipment meets VA requirements. B-178508, October 23, 1973. Accordingly, we do not find the requirement that the washers be shellless unduly restrictive.

Columbia also has questioned the propriety of letting a single contract for the construction of the building and the laundry equipment. We have held that the decision whether to procure by means of a total approach as opposed to separate procurements is a matter for the procuring agency to determine. Allen and Vickers, Inc., et al., 54 Comp. Gen. 445, 452, 74-2 CPD 303.

For the above-stated reasons, the protests are denied.


Acting Comptroller General
of the United States