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**DECISION**



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

21152

FILE: B-205093

DATE: March 16, 1982

MATTER OF: Honeywell, Inc.

**DIGEST:**

1. Protest that specification unduly restricts competition by precluding use of the protester's temperature control system is dismissed as academic. The protester was an unsuccessful subcontractor, not because of the specification, but because it was not the low quoter to the prime contractor.
2. GAO will not question a specification for a system which allegedly does not meet Underwriters Laboratory (UL) standards. Compliance with UL standards is a restriction on competition and GAO will not object to a contracting agency's determination that less restrictive specifications and tests will meet its minimum needs.

Honeywell, Inc., protests the allegedly restrictive and incomplete requirements included in the invitation for bids (IFB), specification No. 695-71-81, issued for Veterans Administration (VA) project No. 80-123 for a thermal recovery system at the VA Medical Center, Wood, Wisconsin.

The protester essentially contends that the automatic temperature and humidity controls system specification was written effectively to limit contractors to furnishing the Johnson Controls, Inc. (Johnson), temperature control system and that it constitutes a design rather than a functional specification. Honeywell also asserts that the IFB does not provide adequate information upon which to prepare or evaluate bids, and that the system specified does not meet Underwriters Laboratory (UL) standards. The protester concludes that the IFB does not state the VA's actual minimum needs and that it unduly restricts competition by precluding use of Honeywell's temperature control system.

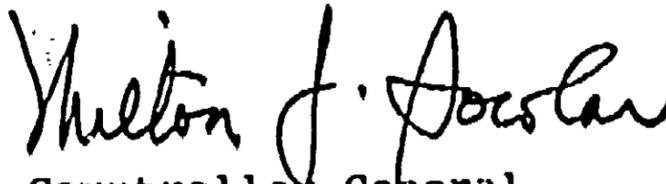
We dismiss in part and deny in part the protest.

Honeywell initially protested to the VA on the same grounds prior to bid opening. Although Honeywell did not bid, it did submit a subcontract proposal offering its own building management system to the apparent low bidder, The Wenninger Company, Inc. (Wenninger). Wenninger, however, did not subcontract with Honeywell for the temperature control work, because Honeywell did not submit the low quote. Wenninger comments that Honeywell's offer to perform the temperature control work conflicts with Honeywell's protest that the IFB precluded Honeywell from competing. Wenninger takes the position that the above-quoted provisions of the IFB do not state that the new work must be provided by Johnson, but require only that the system must be compatible with existing Johnson equipment used in the building.

We find it unnecessary to resolve the issue of the restrictiveness of the specifications. Even if we were to agree with Honeywell that the specifications were improper, Honeywell would not receive the subcontract award because it was not the low bidder. Honeywell's proposal to Wenninger was rejected, not because of the specifications, but because of price. Therefore, resolution of the protest is not determinative of the successful subcontractor and is academic. See Dataproducts New England, Inc.; Honeywell, Inc.; Tracor Aerospace, B-199024, January 9, 1981, 81-1 CPD 16.

In regard to Honeywell's concern that the system specified may not meet UI standards, we have recognized that the contracting agency's responsibility for determining its actual needs includes the determination of testing requirements requisite to assure that the product offered does in fact meet those needs. Sparklet Devices, Inc., 60 Comp. Gen. (B-199690, June 4, 1981), 81-1 CPD 446; B-166570, June 16, 1969. Therefore, we will not question an agency's determination that less restrictive specifications and testing requirements will meet its needs. Sparklet Devices, Inc.--Reconsideration, B-199690.2, October 8, 1981, 81-2 CPD 285.

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States