



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

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B-178594

November 20, 1973

Chamberlain-Barnhart Co., Inc.
140 Highland Street
Port Chester, New York 10573

Attention: Mr. Edwin A. Barnhart
President

Gentlemen:

This is in reply to your letter of August 24, 1973, to a member of the Senate, which was forwarded to our Office, requesting reconsideration of our decision, B-178594, of August 3, 1973, which denied your protest against the alleged restrictive character of the specifications in invitation for bids (IFB) No. 65-73, issued by Saint Elizabeths Hospital, Department of Health, Education, and Welfare (HEW).

The basis of your protest continues to be that the specifications used in the IFB required the furnishing of a detention screen constructed with a box-type frame, while your screen employs the open channel method of construction. Only one company manufactures a screen with the box frame, Metal Construction Services Corporation (MCSC), the only firm to submit a bid under the solicitation and the subsequent awardee. Therefore, you believe the specification was restrictive of competition.

In our decision of August 3, we pointed out that the determination of the actual needs of the Government rests primarily with the procuring agency and the record before our Office revealed that in a prior procurement by the hospital, you had furnished the box-type frame. For those reasons, we concluded the specifications were not restrictive.

In your letter of August 24, 1973, requesting reconsideration, you state that you lost money on the prior contract requiring the box-type frame and that when the recent IFB was issued, you attempted to have the specifications changed but to no avail. Furthermore, you have told the hospital that your screens meet the requirements but they continue to use the box-type specifications.

Our Office has held that the Government may not be placed in the position of allowing bidders to dictate specifications which will permit

[Alleged Restrictive Specifications

in IFB]

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acceptance of equipment which does not, in the considered judgment of the procuring agency, reasonably meet the agency's need. 35 Comp. Gen. 251 (1956); B-166731, August 14, 1969. The fact that the procuring agency in this case continues to require the box-type frame indicates that in its judgment, this particular type of frame constitutes the minimum needs of the Government for this particular installation.

While we will reconsider our decisions if a material mistake of law or fact is alleged and proven, there is no showing in your letter of August 24 that our prior decision involved any mistake of fact, nor are there any legal authorities or precedents cited to establish any error of law therein; rather, you continue to take issue with the reasons given by HEW for awarding the contract to MCSC.

Therefore, we find no basis for concluding that the contract was not properly awarded, and we remain of the opinion that no valid basis exists on which we could disturb the award. The decision of August 3, 1973, denying your protest is therefore affirmed.

Sincerely yours,

Paul G. Dambling

For the Comptroller General
of the United States