

DECISION



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

*Has Further
P.L.I*

04729

FILE: B-189032

DATE: January 10, 1978

MATTER OF: Austin-Campbell Co.--reconsideration

DIGEST:

1. Prior decision is affirmed where protester has not demonstrated decision was based upon error of fact or law.
2. Solicitation was properly canceled and readvertised, where, according to protester's argument, it was ensnared into nonresponsiveness by defective specifications, and defective specifications may have prevented maximum competition.

Austin-Campbell Co. has requested reconsideration of our decision in Austin-Campbell Co., B-189032, September 28, 1977, 77-2 CPD 236, in which we held that the protester's bid under invitation for bids No. DACA07-77-B-0003, issued by the United States Army Corps of Engineers, was properly rejected as nonresponsive and the solicitation canceled and readvertised.

The procurement was for a cold storage room for use in Korea and award was ultimately made to another firm under the resolicitation. (Austin-Campbell did not bid.)

Austin-Campbell contends that our decision is erroneous because it is based upon the fact that Austin-Campbell bid on a refrigeration unit having a 15,300-BTU/HR capacity when in fact it did not bid on any capacity as the "solicitation's capacity was undefined and to submit capacity data would have required us to make assumptions."

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The original solicitation included a requirement that bidders submit descriptive literature to show that the offered refrigeration unit had a 20,000-BTU/HR capacity. Austin-Campbell's bid was found nonresponsive by the Corps because, among other things, it concluded that the descriptive literature submitted with the bid showed that Austin-Campbell was offering a 15,300-BTU/HR capacity. The following quote from our decision shows that it was not based upon the fact that Austin-Campbell bid on a 15,300-BTU/HR capacity:

"* * * While we do not view the data as showing Austin-Campbell's intention to supply an item with 15,300-BTU/HR capacity, we believe that the data failed to show that Austin-Campbell's offered item was in total conformance with the required specification. In the printed descriptive literature submitted with its bid for the refrigerated units, Austin-Campbell indicated it was bidding on its system No. AZ-300A with a BTU/HR rating of 15,300, with the system No. followed by indiscernible handwriting and the BTU/HR rating crossed out and no figures substituted therefor. If Austin-Campbell intended to modify its system to meet the specification, it should have clearly indicated this on the descriptive data submitted. Cummins-Wagner Co., Inc., Joy Manufacturing Company, B-188486, June 29, 1977, 77-1 CPD 462. Since this was not done, we believe the bid was properly found nonresponsive because of this ambiguity."

Therefore, our decision is not erroneous as contended. While Austin-Campbell argues that the 15,300-BTU/HR rating was crossed out to indicate that it was not offering any rating figure, we do not believe this intent is clear. Moreover, if Austin-Campbell's bid is interpreted, as urged, to offer no rating, it was not responsive to the requirement that descriptive literature show compliance with the 20,000-BTU/HR capacity.

In its request for reconsideration Austin-Campbell says that it was unable to specify a BTU/HR rating because the specification was deficient in omitting the ambient temperature. Further, Austin-Campbell states:

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"To elaborate on the capacity specification as written in B-0003, the room condition was 35°, which would normally have an evaporator temperature of 20° to 25°F. The specified 10°F evaporator temperature is very unusual, and most 'standard' evaporators are unsuited for this 25°TD. This +10°F temperature also requires the use of defrost heaters to assure proper operation. We have two customers who actually use this type unit, so we are familiar with the problems of selection and operation. Our submitted AZ-300 MS is a special unit for operation at these conditions, with the specified 3 H.P. compressor. I again note that the AZ-300-MS capacity at 87°F ambient exceeds the specified 20,000 BTU/HR, at 10°F ET. I would like to note here that this +10°F evaporator temperature was changed to the standard +20°F figure in B-0012. Thus this specification was truly in error, and our BA300 (same submitted sheet) would have had in excess of 24,000 BTU/HR capacity at +20°F temperature at less cost, and without defrost heaters." (Emphasis added.)

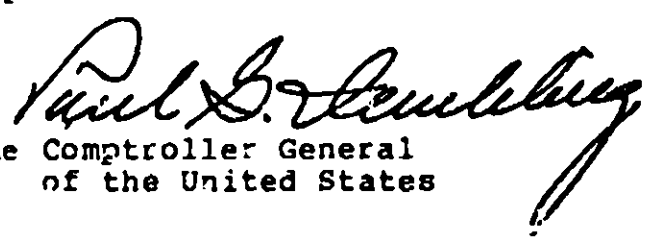
Finally, Austin-Campbell notes that the ambient temperature was included in the resolicitation.

With regard to Austin-Campbell's argument that it could not show compliance with the BTU/HR requirement because of omission of the ambient temperature, we have held in similar circumstances that where a solicitation inadequately expresses the Government's requirements so as to ensnare a bidder into submitting a nonresponsive bid, the solicitation should be canceled and resolicited under terms which clearly reflect the Government's minimum needs. Essex Electro Engineers, Inc.,; Cummins Diesel Engineers, Inc., B-182486, June 19, 1975, 75-1 CPD 372. Also, Austin-Campbell has stated that had the specifications not been defective it would have offered a unit at less cost. In this connection, we note that other bidders were eliminated from the competition because their bids exceeded the applicable funding limitation. While there is no way to determine with certainty whether other bidders would have submitted lower prices if the specifications had not been defective, it is a fundamental requirement that advertised invitations must contain sufficient information for the intelligent preparation of bids so that maximum competition is obtained. ABS Duplicators, Inc., et al.,

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B-187604, April 8, 1977, 77-1 CPD 247. Under the rationale of these cases, we believe cancellation and resolicitation was proper.

Accordingly, our prior decision is affirmed.


For The Comptroller General
of the United States