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g. Ruggert
Proc I

DECISION



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

FILE: B-190870

DATE: April 24, 1978

MATTER OF: Bethesda Research Laboratories, Inc.

DIGEST:

Even if there was no authority to negotiate procurement and to solicit oral offers, resolicitation is not required since competition was obtained and there was no prejudice to protester's competitive position.

Bethesda Research Laboratories, Inc. (BRL), has protested that it was improper for the Veterans Administration (VA) to negotiate under the authority of 41 U.S.C. § 252(c)(7) (1970), pertaining to "medicines or medical property," and to solicit oral offers to procure five different ultra pure reagents for the National Institutes of Health (NIH).

NIH requested that the reagents be purchased from a firm whose products had been tested and approved by NIH. There were only two firms which had prequalified their product, BRL and Schwarz/Mann, Division of Becton Dickinson Immunodiagnostics.

Essentially, it is BRL's position that the cited negotiation authority does not apply because the procurement is for chemicals, not medicines or medical property, and there was no urgency justifying the solicitation of oral offers. Therefore, BRL requests that the procurement be resolicited with the requirement that sealed written bids be submitted.

VA's position is that the procurement should not be resolicited because its regulations (41 C.F.R. § 8-3.207(b)(4) (1977)) implementing the negotiation authority contemplate contracts "for the purchase of drugs and chemicals" (emphasis supplied) and there was an urgency justifying the oral solicitation.

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Assuming, arguendo, that BRL's position is correct, it is not apparent that it was prejudiced. The items on which the two offerors were requested to submit oral offers were standard commercial products previously tested and approved by NIH and identified to the offerors by their respective catalog product numbers. The offerors were also advised of the total quantity required of each item. Each offeror was advised that the other was being requested to submit an offer. Thus, both offerors were aware that they were in a competitive situation. The offerors were not required to submit prices immediately over the telephone. They were allowed to consider the Government's requirements, to decide what they wished to charge for the items and to telephone their offers to the VA at their convenience. Both offerors telephoned their prices to the VA the following day. BRL's prices on four items were less than its contract price for the prior year. The price on the fifth item was the same as its prior contract price.

In the circumstances, it appears that despite the informality of the procedures, competition for the Government's requirements was provided and achieved. Both bidders had the opportunity to provide their best prices for the procurement and the failure to state the prices in writing does not detract from the prices intended at the time. In that connection, BRL indicated in its December 9, 1977, letter of protest to our Office that it "offered written confirmation of its pricing for the solicitation" at the time of its oral offer but was told that it was unnecessary. Thus, the results would have been the same even if the procurement had been conducted on a formal basis. Therefore, the resolicitation of offers at this time, after BRL has learned that the prices it quoted, and which it was prepared to confirm in writing, were not low, would serve only to create an auction atmosphere and provide BRL with an opportunity to recompute its prices and attempt to better the successful prices which allegedly are, at least in part, "unrealistically low."

Where adequate competition has been obtained and the results would have been the same if the procurement had been formally advertised instead of negotiated, we

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have denied the request for resolicitation on the bases that the protester was not prejudiced by the use of negotiation and that the resolicitation would be tantamount to sanctioning a prohibited auction. Michael O'Connor, Inc., B-186654, October 18, 1976, 76-2 CPD 337. See also Kleen-Rite Corporation, B-189458, September 28, 1977, 77-2 CPD 237; Parkson Corporation, B-187101, February 11, 1977, 77-1 CPD 103; Postal Data Corporation, B-186523, January 31, 1977, 77-1 CPD 76.

Therefore, even if the manner in which the VA solicited offers was improper, inasmuch as competition was obtained and there was no prejudice to the protester, the protest and the request for resolicitation are denied.

R. F. K. 1/12
Deputy Comptroller General
of the United States