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DECISION



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

FILE: B-199471.2

DATE: June 17, 1981

MATTER OF: Robbins & Myers, Inc.

DIGEST:

Request for review by subcontractor under EPA grant will not be considered on merits where grantee's engineers find subcontractor's progressing cavity pump does not comply with specifications and decides to utilize lobe-type pumps in project. While complainant phrases request in terms of new award action, in actuality, it is continuing protest of cancellation of contract. Since complainant would only offer same equipment previously rejected, remedy is under canceled contract.

Robbins & Myers, Inc. (R&M), has requested our review of certain procurement actions taken by the city of Portland, Oregon (grantee), under project No. C-410557 for the construction of the Columbia Wastewater Treatment Plant. The project is funded by a grant from the Environmental Protection Agency.

The prime contract was awarded by the grantee to Fred J. Early, Jr. Company (Early) and R&M was awarded a subcontract by Early to supply progressing cavity pumps for the project.

On November 14, 1979, the grantee submitted a price request to Early for lobe-type positive displacement pumps rather than progressing cavity pumps. Early forwarded the request to R&M, which replied that the lobe-type pumps did not comply with the specifications and questioned why the grantee desired a price

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on nonspecified equipment. On November 30, 1979, R&M was advised that the drawings it had submitted on the cavity pumps had been reviewed by the grantee's engineers and revisions would be required. R&M, on December 11, 1979, informed Early that revised drawings would be submitted within a week.

By letter of January 2, 1980, to Early, the grantee reviewed and summarized the reasons for the rejection of the R&M submission and advised that no new submittal had been received. On January 7, 1980, Early advised R&M that Early was issuing a change order to R&M's contract which was canceling the contract in its entirety for noncompliance with the terms of the agreement, i.e., timely submission of acceptable data and prompt followup to request for revisions.

R&M's complaint is based on the allegation that the grantee has disregarded the specifications contained in the original solicitation in changing from progressing cavity pumps to lobe-type positive displacement pumps, thereby purchasing nonconforming equipment without the benefit of competitive bidding.

Upon our review of the record before our Office, we believe R&M is merely continuing its protest of the cancellation of its contract. This is a matter of contract administration, not for review by our Office, and we leave R&M to its remedies under the canceled contract.

R&M cannot supply the new type of pump which the grantee requires. If a competition had been conducted, R&M would offer to supply the same item which the grantee's engineers have found unacceptable.

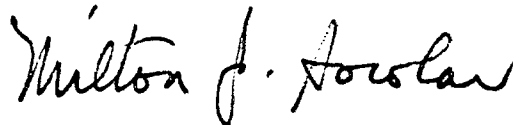
This is shown by the fact that following the issuance of the change order which canceled R&M's contract, R&M made another submittal to the grantee's engineers which was rejected on February 26, 1980. The pumps were rejected because they were not "highly efficient" as required by the specifications because of high energy consumption and the units were loaded to 107 percent of available load at design

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conditions. R&M continues to disagree with these conclusions.

Therefore, the complaint is dismissed.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States