DECISION

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

29901

FILE: B-216312 DATE: November 30, 1984

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

Protest that solicitation is merely a reissuance of one that was canceled after the same firm protested that the specifications were unduly restrictive and that the new solicitation retains the same restrictions is dismissed. The new solicitation, while it is for similar equipment, in fact is not a reissuance of the prior one; the bases for the specifications in the two solicitations are significantly different; and the protest otherwise fails to specify any deficiencies in the current solicitation.

Julie Research Laboratories, Inc. (JRL), protests that the Department of the Army's solicitation No. DAAH01-84-R-0361 is a reissuance of a canceled solicitation, No. DAAH01-83-B-0220, under which JRL had filed a protest alleging that the specifications created by the Army were unduly restrictive. JRL's current protest seeks to reinstate the prior protest, on the identical grounds as before, and does not identify any other specific grounds for complaint.

We dismiss the protest.

The current solicitation in fact is not a reissuance of the canceled one. The current solicitation implements a foreign military sale to Egypt of a "Secondary Transfer Calibration Set" under the Arms Export Control Act, as amended, 22 U.S.C. §§ 2751-2796c (1982). The previous solicitation concerned a foreign military sale of a "Secondary Transfer Calibration Set" with a spare parts kit to Thailand and a "Secondary Reference Calibration Set" with a spare parts kit to Taiwan.

Moreover, to the extent that both solicitations involve calibration sets and include common specifications, the bases for the specifications are significantly

different. In the previous solicitation, the Army specified certain brand name items to be components of the sets. In the current procurement, however, the foreign government specifically designated the items to be purchased with the instruction, repeated in the solicitation, that if any brand name components were obsolete or discontinued, then the prime contractor would have to replace them with the same manufacturer's latest model. The procurement regulations that govern foreign military sales expressly provide that a contracting officer "shall honor requests for sole source prime and subcontracts from the [foreign military sale] customer." Department of Defense Federal Acquisition Regulation (DOD FAR) Supplement § 25.7307(a), 49 Fed. Reg. 38,549, 38,568 (1984) (to be codified at 48 C.F.R. § 225.7307(a)).[1] In our view, the fact that the current solicitation includes directed sources of components that were specifically requested by the foreign military sale customer is, for purposes of reviewing the propriety of the specifications, a significant difference from the prior procurement, in which the Army designated certain sources.

In view of the differences in the procurements and since JRL otherwise has not specified any deficiencies in the current solicitation, we dismiss the protest.

Harry R. Van Cleve
General Counsel

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[1] Because the United States administers the foreign government's funds in the capacity of a trustee and these funds can only be disbursed in compliance with the terms of the trust, 31 U.S.C. § 1321 (1982), the legal framework for our review of these procurements is the DOD FAR Supplement and not the procurement statutes that govern purchases made by the military departments on their own behalf using United States funds appropriated for that purpose. Allied Repair Service, Inc., 62 Comp. Gen. 100 (1982), 82-2 C.P.D. ¶ 541.