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*Fitzgerald  
Proc. II*

**DECISION**



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

**FILE:** B-189642

**DATE:** February 28, 1978

**MATTER OF:** Dubie-Clark Company,  
Patterson Pump Division

**DIGEST:**

1. Where bidder omits required information and descriptive literature, such omission does not make bid nonresponsive if data can be supplied by information inserted elsewhere in bid.
2. Failure to respond to solicitation provision for submission of experience data on proposed engine and other related data which merely seeks information and does not require submission of descriptive data to show that product offered conforms to specifications, or meets minimum experience requirement does not render bid nonresponsive.
3. Technical judgments by Government will not be disturbed where reasonable basis is shown and protester has not proven any lack of compliance with material requirement of IFB to render bid nonresponsive.
4. Evaluation of successful bidder's bid shows that IFB requirement for information relevant to bidder's qualifications and prior experience was satisfied notwithstanding protester's contrary contention. In any event, solicitation did not establish a material definitive requirement of bidder responsibility.
5. For purposes of the Buy American Act, Government properly evaluated complete pumping unit as domestic source, and product with foreign made pump held to be component of end product constituting less than 50 percent of the cost of all components.
6. Protester who was disqualified on earlier IFB for incomplete descriptive literature cannot analogize to prior case in which no protest was filed and no decision rendered.

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Patterson Pump Division (patterson) of the Dubie-Clark Company protests the award under Invitation for Bids (IFB) No. DACW66-77- -0033, issued by the Department of the Army, Corps of Engineers, Memphis District (District) for a Vertical Stormwater Pump, Diesel Engine and Gear Reducer Complete with all Required Auxiliaries.

The IFB was a readvertisement of solicitation No. DACW66-76-B-0099 which was canceled because of inadequate specifications. Upon resolicitation the low bid was submitted by the Axel Johnson Corporation (Axel) in the amount of \$918,163 with the next low bid of \$943,650 submitted by Patterson. A contract was awarded to Axel as the low responsive bidder.

Upon learning of the award, Patterson filed this protest with our Office alleging that the award was improper for the following reasons.

1. Axel submitted incomplete descriptive literature contrary to the IFB requirements.
2. Patterson was the only bidder to correctly position the remote fan cooled radiator while Axel's arrangement will cause a malfunction of the facility.
3. Axel did not show in its bid all three reducer coolers and piping as prescribed in the specifications.
4. Axel is exceeding the upper limits of the specific speed as recommended by the Hydraulic Institute.
5. Axel showed no qualifications or previous experience as required by the IFB.
6. Axel manufactures its pump in Korea, and under the Buy American Act, its price should therefore reflect the amount stated in the specifications for "foreign made equipment."

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7. On a previous solicitation, No. DACW66-76-B-0057, Patterson was disqualified even though it submitted more complete literature than was submitted here by Axel.

Incomplete Descriptive Literature

The solicitation contained a clause entitled "Requirement for Descriptive Literature", which provides in pertinent part:

"(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. \* \* \* Bids will be evaluated strictly on the basis of the information submitted with the bid."

The Government admits that Axel failed to insert at the designated place in the solicitation the identity of the supplier and manufacturer of the proposed pump and the supplier of the engine and gear reducer equipment and that the bidder did not provide experience data on the proposed engine, as required. However, the Government contends that these omissions are remedied either by information furnished by Axel in other sections of the bid or by available, published commercial literature. In our opinion, the supplier and manufacturer of the pump and the supplier of the engine and gear reducer are sufficiently identified because Axel provided information elsewhere in its bid which identified the manufacturers of these items as the suppliers. Contrary to the protestor's position, it is not significant that the identifying information was inserted elsewhere in the solicitation for other purposes.

Furthermore, the omitted information on experience data of the proposed engine was obtained from the Waukesha Bulletin and the Diesel Engine and Gas Turbine Catalog, both of which were on hand in the District's Office. As to this requirement the solicitation provides:

"(3) Drawings and Descriptive Data. The following drawings and other descriptive data shall be furnished hereunder.

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\* \* \* \* \*

d. Experience data on the proposed engine, including at least (1) location; (2) date installed; (3) descriptive data on the proposed engine, including such items as inter-coolers, superchargers, and after-coolers; (4) rating; (5) number of years engine operated 1200 hours or more at not less than 3/4 rated load; and (6) type of fuel used."

Inasmuch as the specification does not establish a minimum experience requirement for the engine, it is our opinion that the quoted provision merely solicits unessential information. Thus we conclude that the experience data et cetera is not a material bidding requirement within the meaning of the Requirement for Descriptive Literature clause and the failure to respond thereto does not render the bid nonresponsive.

#### Technical Sufficiency of Equipment

Patterson argues that Axel's plan (drawing) does not properly position the remote fan cooled radiator and, as a result, the diesel engine will overheat and stop within two hours. The agency states that the solicitation did not require bidders to demonstrate the satisfactory operation of these items in the drawings and data to be supplied. As stated in the solicitation, the drawings were to provide the dimensions "\* \* \* necessary to show that the machinery to be furnished could be properly installed in the space provided in the station, without major dimensional changes, major modifications or major alterations of the structure." Moreover, as the agency points out, the solicitation expressly requires the contractor to assume responsibility for correcting malfunctions such as overheating and Axel did not take exception to this requirement. In the circumstances, we do not find a sufficient basis for concluding that Axel's bid indicates an intention to provide nonconforming equipment.

Although Patterson objects to Axel's alleged failure to show all three reducer coolers and piping, the contracting officer states that reference to all three coolers was unnecessary because the three units were

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to be identical and the air cooler and piping are shown as one unit. Inasmuch as the specification does provide that the three gear reducers with accessories are to be identical, we agree with the contracting officer's conclusion that the information concerning one of three identical units was sufficient.

The protester also argues that Axel's equipment is deficient because it allegedly will exceed the upper limit of the specific speed recommended by the Hydraulic Institute. However, the protester has not shown that standard was required for this procurement. Moreover, the solicitation in this case adopted the Critical Sigma Test rather than the Institute's standards. Accordingly, we find no basis for rejecting Axel's bid even if its equipment does not satisfy the Institute's standards.

#### Qualifications

Patterson also contends that Axel did not comply with paragraph 7 of the IFB, entitled, "Qualifications", which provides in pertinent part:

"7. QUALIFICATIONS. Each bidder shall state in his bid whether he is now or ever has been engaged on any contract or other work similar to that proposed, giving the location and rating of the equipment and the year in which it was manufactured or installed. He shall also submit such other information as will tend to show his ability to prosecute vigorously the work required by these specifications.

In this connection, Patterson argues that Axel's bid shows no qualifications or previous experience whatsoever. However, a document entitled, "Experience Required" was submitted with Axel's bid. It lists four similar contracts undertaken by Axel and in our opinion properly was accepted by the contracting officer as responsive to the informational requirement quoted above. In any event, we do not construe the above quoted solicitation provision regarding bidder qualification as establishing a material definitive requirement of bidder responsibility. Rather, the provision merely requests each bidder to provide all pertinent information as to its qualifications and prior experience so that the contracting officer can use this information in evaluating bidder responsibility.

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Buy American Act

Because Axel offered pumps of Korean manufacture, Patterson contends that the Axel bid should reflect the added evaluation factor for foreign made equipment as required pursuant to the Buy American Act, 41 U.S.C. §§ 10a-d (1970) and regulations issued pursuant thereto. The Government states that Axel represented in its bid that the cost of components of foreign origin amounts to only 28 percent of Axel's total component cost. Moreover, the agency argues that although the pump is foreign it is not an end item for this procurement. It states that Axel's bid may be evaluated as foreign only if the cost of all domestic components does not exceed 50 percent of the end item's total component cost and that Axel's bid must be evaluated as offering a domestic end item because less than half of Axel's total component cost is for components of foreign origin.

The provisions of the Act are implemented by Section 6, Part 1, of the Armed Services Procurement Regulation (ASPR) which provides in § 6-102.1 that in:

"\* \* \* determining whether an end product is a domestic source end product, only the end product and its components shall be considered."

Components are defined by ASPR § 6-001(b) as those articles, materials and supplies which are directly incorporated into end products. Domestic source end product is defined by ASPR § 6-101(a) as follows:

"(a) Domestic source end product means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and, in the case of components of foreign

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origin, duty (whether or not a duty free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Act."

The threshold question then is whether the Government is correct in its assertion that the pump is only a component of a domestic source end product. We have considered the question of whether the assembly of various components produces an end product which can be considered "manufactured" in the United States. In 46 Comp. Gen. 813 (1967) we concluded that "manufactured" in the United States included the assembly in the United States of articles from foreign manufactured components. In that case, the mounting and alignment in the United States of foreign made electric motors onto domestically manufactured circulating pump units constituted a "manufacture" of the complete pump units (the end product) in the United States. See also Unicare Vehicle Wash, Inc., B-181852, December 3, 1974, 74-2 CPD 304.

In a similar case, Imperial Eastman Corporation--Thorsen Tool Company, 53 Comp. Gen. 726 (1974), 74-1 CPD 153, we held that for the purposes of the Buy American Act general mechanics' tool kits containing certain foreign made tools could be properly evaluated as domestic source end products because each kit as an entirety--not the individual tools contained therein--was an "end product" and the cost of the foreign component tools constituted less than 50 percent of the cost of all the components. We recognized in that case that the essential need of the Government was not for individual tools, but for complete mechanics' tool kits containing certain related tools.

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In the present case, the essential need of the Government is not for a pump, engine and gear reducer, but for an integrated unit. The Korean made pump is thus a component of this unit and not an end product in itself. Moreover, Axel has specified that not more than 28 percent of the cost of the components in the end product can be attributed to equipment of foreign origin. This is well within the 50 percent rule. The record does not suggest that the Government should not have accepted this figure and we have no reason to question the Government's evaluation of Axel's bid as offering a domestic end product. Consequently, Axel's price did not have to reflect the added evaluation factor for foreign made equipment as alleged.

Patterson Pump's Earlier Disqualification  
for Incomplete Descriptive Literature

Patterson contends that it was disqualified on a previous solicitation, No. DACW66-76-B-0057, though it submitted more complete descriptive literature than Axel submitted in this case.

However, since Patterson never availed itself of the opportunity to file a protest with our Office based on this disqualification, we have no basis to judge whether the Government action was proper or not and we will not review the propriety of that action at this time.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States