

CHALPIN
7/21/2009

DECISION



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

FILE: B-208291

DATE: November 30, 1982

MATTER OF: B&B Chemical Company, Inc.

DIGEST:

1. A protest that a solicitation should be restrictively drawn is not ordinarily for consideration under the Bid Protest Procedures.
2. GAO will not consider a contention that has been previously considered and denied where the protester does not present any additional arguments or information in support of the contention.
3. A protester has not shown by clear and convincing evidence that use of a particular engine path cleaning compound procured is restricted by local California air quality regulations where the protester's contention is based solely on its own analysis of the applicability of the air quality regulation.

B&B Chemical Company, Inc. (B&B), protests the award of a contract to Purex Corporation (Purex) under request for proposals (RFP) No. DLA400-82-R-5335 issued by the Defense Logistics Agency (DLA) for engine gas path cleaning compound. B&B contends that the award to Purex would be improper because the Government's use of the Purex product in California is prohibited by the San Diego and Sacramento air quality regulations and is severely restricted by the Fresno and Bay Area air quality regulations.

We deny the protest.

In an earlier protest by B&B concerning the previous RFP for the same engine gas path cleaning compound, B&B unsuccessfully contended that use of the

Purex product in California violates the San Diego and Sacramento air quality regulations and that, therefore, since Federal law requires DLA to comply with local air pollution requirements, it was improper for DLA to accept the Purex proposal. See B&B Chemical Company, Inc., B-206398, June 28, 1982, 82-1 CPD 629. B&B now restates its past argument and additionally alleges that use of the Purex product in California is severely restricted by the Fresno and Bay Area air quality regulations.

In B&B Chemical Company, Inc., above, we concluded that B&B had failed to show by clear and convincing evidence that use of the Purex product in the San Diego and Sacramento districts violates San Diego and Sacramento air pollution standards. We based this conclusion on the fact that the record contained only: (1) B&B's opinion based on its analysis that use of the Purex product would violate air quality standards in the San Diego and Sacramento districts, and (2) DLA's statement that it was unaware of any authoritative ruling supporting B&B's opinion.

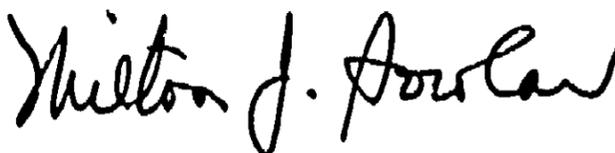
However, B&B now produces an opinion by the San Diego Air Pollution Control District (SDAPCD) that use of the Purex product in the San Diego district violates SDAPCD Rule 66(e). The opinion states that, based upon a chemical analysis of the Purex product by an independent testing laboratory, the Purex product is a "photochemically reactive compound" exceeding the compositional limitations set forth in SDAPCD Rule 66(u). The opinion also states that the jet engine gas path cleaning operation to be performed with the Purex product is a "degreasing operation" within the meaning of SDAPCD Rules 66(e) and (q) so as to make SDAPCD Rule 66 applicable. Further, the opinion finds that discharge of the Purex product to the atmosphere from a degreasing operation would not be reduced by the percentage by weight required by SDAPCD Rule 66(e). SDAPCD concludes that use of the Purex product in the San Diego district violates SDAPCD Rule 66(e). B&B contends that DLA would use the Purex product at Miramar Naval Air Station (Miramar) and SDAPCD states that Miramar is within its geographic jurisdiction.

DLA does not dispute the opinion by the SDAPCD. DLA states that it has informed Miramar of the SDAPCD opinion and that it will requisition another product for Miramar in the event that it may not use the Purex product there. Further, DLA contends that use of the Purex product does not come within the scope of the Fresno and Bay Area air quality regulations and that the Fresno and Bay Area enforcement agencies have made no determination that use of the Purex product would be severely restricted in their districts.

Essentially, B&B is protesting that the RFP should have been drawn to preclude the Purex product. However, a protest that a solicitation should be restrictively drawn is not ordinarily for consideration under the Bid Protest Procedures. Grove Manufacturing Company, B-202531, August 17, 1981, 81-2 CPD 147; Miltope Corporation--Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417. In any event, as indicated above, DLA has advised that another product will be requisitioned for Miramar if Miramar is precluded from using the Purex product. Although B&B contends that the entire procurement should be canceled and resolicited in the circumstances, DLA has indicated that this is unnecessary since the RFP was not obtaining the product exclusively for Miramar and that the product is to be delivered to two depots which will distribute it to various other locations inside and outside the United States where it can be used, thus obviating the need for a resolicitation. To the extent that Miramar has a need that cannot be met by the current procurement, we assume that the need will be satisfied by another procurement upon which B&B will have an opportunity to compete.

In addition, B&B presents no new evidence over its prior protest in support of its contention that use of the Purex product would violate the Sacramento air quality regulations. Where a protester fails to present any arguments or information which would distinguish its present contention from that which we have previously considered and denied, we will not consider the contention. Alan Scott Industries, B-205973, February 9, 1982, 82-1 CPD 122.

Further, B&B's contention that use of the Purex product is severely restricted by the Fresno and Bay Area air quality regulations is based solely on its own analysis of the applicability of the Fresno and Bay Area air quality regulations and not on any authoritative ruling. B&B thus has failed to show by clear and convincing evidence that use of the Purex product in the Fresno and Bay Area districts violates Fresno and Bay Area air pollution standards. See B&B Chemical Company, Inc., above.

for 
Comptroller General
of the United States