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DECISION



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

FILE: B-215836; B-215836.3 **DATE:** December 6, 1984

MATTER OF: Superior Boiler Works, Inc.; Conservco, Inc.

DIGEST:

Agency's specifications for boiler equipment are not unduly restrictive of competition where the agency presents a reasonable explanation of why the restrictions are necessary to meet its minimum needs, and the protester fails to address the explanation or show that the specifications do not represent the agency's legitimate actual needs.

Superior Boiler Works, Inc. and Conservco, Inc. protest as restrictive the specifications in invitation for bids (IFB) No. 431-3K15-84, issued by the Department of Agriculture for the replacement of four boilers at the Beltsville Agricultural Research Center in Maryland. The protesters contend that some of the specifications are based on a competitor's model and unfairly prevent them and other firms from offering their equipment.

We deny the protests.

Superior and Conservco complain that 10 of the invitation's specifications prevented them and others from offering otherwise acceptable boilers. In their comments on the agency report filed with this Office on their protests, Superior and Conservco^{1/} concede that their equipment meets at least 5 (and possibly more) of the 10 specifications, although the protesters assert that these specifications prevent other manufacturers from competing.

^{1/} In fact, Conservco submitted a bid under the IFB, but was the sixth low of 12 bidders.

We will not consider the propriety of the 5 specifications the protesters admit they meet. The protests regarding these specifications are essentially on behalf of other potential bidders that would be economically affected by the solicitation's allegedly restrictive nature. However, section 21.1(a) of our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1984), requires that in order for a protest to be considered, a protester must be an "interested party," which is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. See Kentucky Building Maintenance, Inc., B-196368, Jan. 16, 1980, 80-1 CPD ¶ 49. The other potential bidders, not Superior and Conservco, are the proper parties under section 21.1(a) to complain about these specifications. See Sentinel Electronics, Inc., B-212770, Dec. 20, 1983, 84-1 CPD ¶ 5.

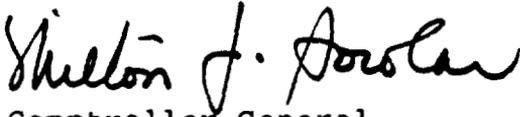
Concerning the specifications that remain at issue, we point out that officials of the contracting agency are the ones most familiar with the conditions under which supplies, equipment or services have been used in the past and will be used in the future, and therefore are generally in the best position to know the government's actual needs. Consequently, when a protester challenges a specification as unduly restrictive of competition, and the procuring agency establishes prima facie support for its contention that the restriction it imposes is needed to meet its minimum needs, the burden is on the protester to show that the requirement complained of is clearly unreasonable. See Champion Road Machinery International Corp., et al., Mar. 1, 1983, 83-1 CPD ¶ 203.

Here, the solicitation requires, among other things, that the boilers operate with a burner gun with an "interlock switch" that can be serviced without disconnecting the piping, and have a blower with a discharge damper of the "high pressure drop type proving high turbulence." As to the former requirement, the agency states that equipment is removed for maintenance on a weekly basis and that a burner gun that can be serviced without removal of the piping therefore is needed because it reduces fatigue on pipe fittings and saves maintenance time. Concerning the discharge damper, the government states that this feature is available from a number of manufacturers and that its experience has shown this feature to be "virtually maintenance free" and therefore necessary.

In our view, each of these justifications is reasonable on its face. The protesters have not responded to the agency's justification for the burner gun specification except to state that an interlock switch is not necessarily required in all burners for proper positioning of burners for firing. As to the requirement for a discharge damper, the protesters merely state that they are unaware of firms that manufacture boilers with this feature. The protesters' response, however, fails to address the agency's concerns about economic and quick maintenance of the equipment; the protesters clearly have failed to meet their burden of showing that the agency's justification for the specifications are unreasonable.

In view of this conclusion, we need not further discuss the invitation's other allegedly restrictive specifications, since the requirements for a burner gun and a discharge damper legitimately preclude the protesters from offering their equipment. See Tooling Technology, Inc., B-215079, Aug. 6, 1984, 84-2 CPD ¶ 155. If the specifications represent the legitimate needs of the agency, they are not unduly restrictive because some bidders are unable to meet them. See American Sterilizer Co., B-202096, Sept. 4, 1981, 81-2 CPD ¶ 198.

The protests are denied.

for 
Comptroller General
of the United States