

DECISION

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

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FILE: B-216185

DATE: December 27, 1984

MATTER OF: U.S. Polycon Corp.

DIGEST:

Solicitation which specifies metallic conduit for an underground steam distribution system, thereby excluding offer of plastic conduit systems, is unduly restrictive, where the contracting agency contends only that it does not require a plastic conduit system, but neither alleges nor shows plastic conduit is not satisfactory for the intended purpose or that a metallic system otherwise is necessary.

U.S. Polycon Corp. (Polycon) protests award of a contract under invitation for bids (IFB) No. 147-3K15-84, issued by the Department of Agriculture for the installation of steam lines at the Beltsville, Maryland, Agricultural Research Center. Polycon alleges that the specifications are unduly restrictive.

We sustain the protest.

Polycon complains that the specifications for the underground steam distribution system require metallic pipe conduit, thereby excluding the nonmetallic federal-agency-approved "Class A" system manufactured by Polycon. Agriculture has responded that the "Class A" system pertains to piping suitable for nuclear facilities and asserts that, since it has no such facilities, it does not require such piping.

Where a solicitation requirement is challenged as unduly restrictive of competition, it is incumbent upon the agency to establish prima facie support for the restriction. PhilCon Corp.--Reconsideration, B-206641.2, et al., Dec. 30, 1983, 84-1 C.P.D. ¶ 42. Although Agriculture contends that since the Research Center does not have nuclear facilities it does not require the nonmetallic system, Polycon's challenge to the specifications is not that the specifications should require the Polycon system, but that the specifications improperly exclude such a system from

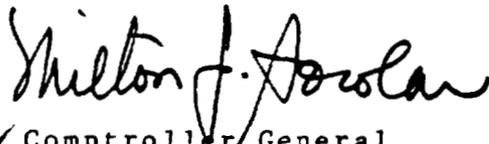
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consideration. Agriculture has not suggested that a nonmetallic steam distribution system would not be satisfactory for the Research Center's purpose and, indeed, we have no reason to believe that a conduit suitable for nuclear facilities is unsuitable for presumably less demanding applications. Since Agriculture does not argue that there are any other considerations that mandate the use of metallic conduit, we must conclude that the IFB unduly restricted competition. See PittCon Preinsulated Pipes Corp., B-209157, June 28, 1983, 83-2 C.P.D. ¶ 30.

Agriculture awarded the contract to another firm while the protest was pending. By letter of today to the Secretary of Agriculture, we are recommending that the agency determine whether a nonmetallic system in fact would meet its needs. We are further recommending that if such a system is found acceptable and if feasible at this time, the contract be terminated for convenience and the requirement resolicited with appropriately revised specifications.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

The protest is sustained.

for 
Comptroller General
of the United States