

DECISION



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

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FILE: B-184141

DATE: September 18, 1975

MATTER OF: Holt Brothers-Energy Division

97392

DIGEST:

1. VA's reliance on Federal Construction Council's recommendations for specification requirements for diesel engine generators is reasonable in absence of proof that recommendations are invalid or obsolete and in light of continuing efforts by Council to update recommendations for generator engines to function as emergency power sources.
2. Preclusion of possible supplier from offering its product because of specification requirement does not render specification unduly restrictive of competition if specification reflects legitimate needs of Government.

Holt Brothers - Energy Division (Holt) has protested as unduly restrictive the specifications of invitation for bids (IFB) 12-75, issued by the Veterans Administration (VA) for the supply of a diesel engine generator to be used to supply emergency power at a hospital.

The specifications for the diesel engine which drives the generator prescribe certain maximum limits for the brake mean effective pressure (BMEP) of various types of engines. Holt contends that the BMEP limitations set forth in the IFB are anachronistic, do not reflect the current state of the art in diesel engine design, and only serve to restrict competition to one manufacturer. Holt maintains that the requirement should be readvertised under specifications in which the maximum BMEP is significantly raised or from which the standard of BMEP is entirely removed.

The VA reports that its Office of Construction does not have staff engineers with the specialized knowledge and experience in the design and application of diesel engines which would be required if the VA were to develop its own specification requirements. In addition, there is no industry-wide body which sets standards for generator diesel engines. Accordingly, the VA has adopted the recommendations of the Building Research Advisory Board, Federal Construction Council, in setting specification requirements to meet its needs,

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including the use of the BMEP. VA maintains that in view of the fact that the diesel engine generators will be used to supply electrical power to hospitals during periods of emergency, it does not think that it can ignore the recommendations of the Federal Construction Council without any proof that the recommendations are invalid.

Holt notes that the Navy in the past has relied on the Federal Construction Council recommendations, but has revised its specifications for its Trident Installation in Seattle, Washington, based on our recommendation in B-173421, September 22, 1971. In contrast, the protester states, the VA has made no effort to revise its own specification. We have ascertained that the VA studied the Navy revision but concluded that it could not revise its own specification in a similar manner since the difference between the Navy's needs as reflected in its specification and those of the VA were such as to preclude a departure from the Federal Construction Council recommendations.

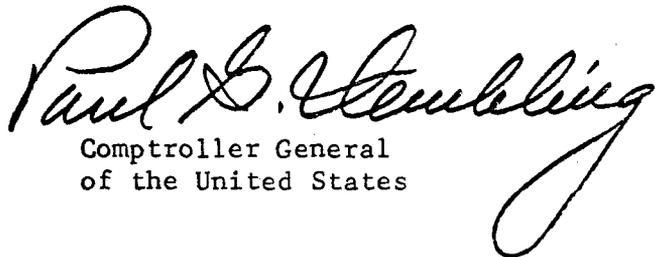
Holt also argues that the VA has acted inconsistently with regard to the Construction Council's recommendations, in that it has refused to alter the BMEP recommendation while it has established a much higher revolutions per minute (rpm) requirement than that recommended by the Construction Council. VA points out, however, that Technical Report No. 46 provides that for requirements above 2,000 KW, a determination should be made on an individual basis for each situation. VA chose the 900 rpm requirement because it was recommended for requirements up to 2,000 KW and seemed best suited to fit the VA's needs. The 450 rpm requirement cited by Holt is based on Technical Report No. 42, which provides recommendations for continuously-operated diesel engines rather than Report No. 46, which provides recommendations for emergency and short-term electric power.

It is also reported that the Federal Construction Council is circulating a revision of Report No. 46 entitled "Diesel Engines for use with Generators to Supply Emergency and Short-term Electric Power." This document raises the BMEP requirement for 4 cycle, turbo-charged generator engines to a level higher than that in the IFB 12-75, but lower than that requested by Holt. This revision also recommends various other changes including some in the rpm requirements. The VA has indicated that it will revise its specification requirements in the light of the Federal Construction Council's report when it is finalized.

Where, as here, a technical issue is presented arising from an agency's identification and articulation of its needs, GAO will not question the agency's opinion in the absence of clear and convincing evidence of error. We believe that it was reasonable for the VA to rely on the Construction Council's recommendations in drafting its specifications for its emergency generator engine, particularly in the light of the Council's attempt to have its recommendation reflect the current state of the art. We also believe that the VA's decision not to revise its specification along the lines adopted by the Navy was reasonable in view of the differing needs of the two agencies. The fact that one or more possible suppliers are precluded from offering their products because of the specification terms does not render the specification unduly restrictive of competition, if it represents the legitimate need of the Government. 45 Comp. Gen. 365, 368 (1965); B-181377, August 21, 1974. Since the VA acted reasonably in relying on the Federal Construction Council's recommendations to determine its legitimate needs, we find no basis on which to conclude that the specification in question was unduly restrictive of competition.

Following our development of Holt's protest under IFB 12-75, that firm raised the identical objection to IFB 697-17-76, also issued by the VA. In view of our conclusion that the specification requirements are not unreasonable, both of Holt's protests are denied.

We do recommend, however, that VA continue its efforts to formulate specifications which will reflect the best current information available to its staff.


Comptroller General
of the United States