

DECISION

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

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FILE: B-209215

DATE: March 22, 1983

MATTER OF: Viereck Company

DIGEST:

Protest against use of specification for automatic tube bending machine utilizing end chuck rather than hitch feed system is sustained. Use of design requirement is not justified where agency is capable of stating its needs by using performance specifications which hitch feed system may meet.

The Viereck Company protests that Invitation for Bids (IFB) DAAG48-82-B-0033 issued by the Corpus Christi Army Depot for automatic tube bending machines unduly restricted competition. The IFB identified a machine manufactured by the Eaton Leonard Company as the brand name product and solicited bids on a brand name or equal basis. We sustain the protest.

Viereck objects to the IFB requirement that "the tube holder shall not release the tube until the last bend regardless of extended bed length." Viereck, as marketing representative for Teledyne Pines, is prepared to offer an automatic tube bending machine using what is called a hitch feed system. The Teledyne Pines machine does not release the tube during the bending cycle, but uses two clamping devices one or the other of which grabs the tube in turn. Viereck correctly assumed that the Army interpreted the quoted provision as a design requirement specifying an Eaton Leonard "end chuck" feature which holds a tube at one end by a single chuck throughout the bending cycle. As Viereck points out, Eaton Leonard submitted the only bid which was received. Viereck says its product is capable of meeting all of the Army's actual needs and points out that Teledyne Pines hitch feed machines have been purchased by a number of Government aircraft rework facilities whose needs are similar to the Army's.

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In sustaining this protest, we first observe that although procuring activities enjoy broad discretion in determining their needs, they may not impose requirements which exceed their actual needs. When a protester challenges a specification as unduly restrictive of competition, it is incumbent upon the procuring activity to establish prima facie support for its restriction. Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437; Sparklet Devices, Inc., 60 Comp. Gen. 504 (1981), 81-1 CPD 446, aff'd, B-199690.2, October 8, 1981, 81-2 CPD 285.

While the use of a design specification does not automatically provide a basis for determining that a solicitation is unduly restrictive (Christie Electric Corporation, B-197481, October 14, 1980, 80-2 CPD 273), such requirements have been held to be inappropriate where an agency is capable of stating its minimum needs in terms of performance specifications which alternative designs could meet. Charles J. Dispenza & Associates; Chicago Dryer Company; McCabe Corporation, B-181102, B-180720, August 15, 1974, 74-2 CPD 101.

In this instance, of course, the fact that only Eaton Leonard submitted a bid supports Viereck's contention that the end chuck requirement is unduly restrictive. On the record before us, we find that the Army has identified nothing which the end chuck restriction accomplishes which could not have been accomplished using performance specifications which, according to Viereck, it could meet. Moreover, some of the features which the Army attributes to the end chuck design are not characteristic of that design, per se. In the circumstances, we see no reason why alternative design approaches could not have been considered and evaluated.

According to the Army, it is of the utmost concern that bending processes be repeatable, i.e., that identical tubular parts be produced each time a program is run. This can only be achieved, the Army contends, if the system always knows where it is in the bending program and that what has been accomplished has been completed accurately. It cannot be achieved, the Army insists, if the tube is released.

While a machine which actually did release the tube would not work, because the tube could shift, the record shows that this argument reflects a factual misunderstanding on the Army's part. As stated above, the Teledyne Pines machine does not release the tubing. It uses two clamping devices one or the other of which grasps the tubing in sequence at all times.

Further, although the Army believes that repeatability is best assured by use of an end chuck design, it has included detailed bending accuracy and acceptance testing requirements in its solicitation which must be met. Viereck has said it can offer a machine which will meet these requirements, and presumably it would support this claim were it required to do so in response to a solicitation which permitted it to compete. If the Army's accuracy requirements were fully specified, the end chuck requirement thus serves only to unnecessarily restrict competition.

Although the Army next says that use of an end chuck promotes safety, the IFB requires the vendor to include safety devices to protect all personnel from any operating hazard. The machine is to be operated from a remote location and is to be installed using a safety mat which will shut it off if personnel enter any dangerous area while the machine is operating. We do not understand how an end chuck requirement enhances safety under these circumstances.

Next, the Army says that only an end chuck system will meet its needs because with such a system each piece of tubing must be inserted into the chuck. According to the Army, the chuck provides a positive stop against which the tubing will be pushed, minimizing scrap loss where the operator might not otherwise properly insert the tubing. The protester states that it can provide machines with a positive stop.

As we see it the Army needs a system capable of verifying that the tubing has been properly loaded, not one particular means of accomplishing this objective. Similarly, although the Army asserts that

only an end chuck machine can accommodate tubing with fittings and flared ends, this need can be specified. The protester says its system can handle such parts by using appropriate tooling, and we see no reason to doubt that it can.

We see no reason, either, to question Viereck's statement that it can offer mar-free tooling to overcome concern by the Army that the use of a hitch feed system might, if the tube clamping device is fouled, damage the tubing each time it regrips it.

Nevertheless, the Army says, an end chuck system is superior because, at the beginning of a bending program, the "tube indexes automatically [relative to the tooling] to the end position before bending starts. [If] the tube is too short, it falls out of the tooling." Thus, it says, scrap would be reduced in those instances where the operator has picked an incorrect tubing size.

This process, which the Army refers to as "automatic tube length verification," may be an incidental characteristic of some machines. If needed, it can be specified, but it is not inherent in end chuck machines, since it is only necessary for any machine to index to the point where the first bend is to be made.

Finally, the Army believes an end chuck machine is best because, it says, "[Eaton Leonard's] automatic verification features minimize the need for human inspections" of the finished work. While the solicitation requires a system to automatically monitor a variety of parameters in performing the bending process, this has not been shown to have anything to do with whether an end chuck is used. As Eaton Leonard representatives at the conference indicated, it markets its verification package as an optional feature which can be installed on the brand name machine, but need not be.

The protest is sustained. We recommend that the Army cancel the IFB in question, revise its requirements as appropriate, and resolicit. By separate letter we are advising the Secretary of the Army of our recommendation.

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As the decision contains a recommendation for corrective action to be taken, it has been transmitted by letters of today to the congressional committees named in 31 U.S.C. § 720 as adopted by Public Law 97-258 (formerly 31 U.S.C. § 1176 (1976)), which requires the agency to submit to the named committees within prescribed times written statements of the action taken on the recommendation.

for 
Comptroller General
of the United States