

Yilloway
25680

DECISION



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

FILE: B-209940.2

DATE: July 11, 1983

MATTER OF: PittCon Preinsulated Pipes Corporation

DIGEST:

A solicitation requirement that an underground heat distribution system be constructed with pressure testable manholes is not unduly restrictive of competition merely because it prevents a system supplier from offering its system which is approved under applicable prequalification procedures; such a restrictive requirement is permissible where it is reasonably related to the agency's minimum needs.

PittCon Preinsulated Pipes Corporation protests the award of any contract under invitation for bids (IFB) No. N62477-81-B-0408, issued by the Department of the Navy for rehabilitation of the underground heat distribution (UHD) system at Andrews Air Force Base, Maryland. PittCon, a UHD system manufacturer and potential subcontractor on this project, contends that certain IFB requirements are unduly restrictive because they preclude it from competing. We deny the protest.

PittCon's protest is based on two specification provisions: one which requires the UHD system to be constructed of fiberglass reinforced pipe (FRP), and a second which requires that the system be equipped with pressure testable manholes. PittCon manufactures a prefabricated UHD system using Polycon, a proprietary plastic material, instead of FRP. This system also is constructed with concrete manholes which are not pressure testable. Thus, PittCon's system is not acceptable under the challenged specifications. PittCon believes its system should be considered acceptable for this procurement since it has been approved for installation on projects of this kind under the applicable Federal Agency Prequalification Procedure. See PhilCon Corp., B-206641, B-206728, B-207421, April 12, 1983, 83-1 CPD 380.

A protester who objects to solicitation requirements bears a heavy burden. The contracting agency has the

026096

primary responsibility for determining its minimum needs and for drafting requirements which reflect those needs. Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339. It is the contracting agency which is most familiar with the conditions under which the services and supplies have been and will be used, and our standard for reviewing protests challenging agency requirements have been fashioned to take this fact into account. Specifically, our Office will not question agencies' decisions concerning the best methods of accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. Interstate Court Reporters, B-208881.2, February 9, 1983, 83-1 CPD 145. While agencies should formulate their needs so as to maximize competition, requirements which may limit competition are not unreasonable so long as they reflect the Government's legitimate minimum needs. Romar Consultants, Inc., supra.

We believe the record contains sufficient support for the pressure testable manhole requirement. The Navy states that this requirement was dictated by the need to prevent water from leaking into the UHD system; such leakage, it maintains, could deteriorate the pipe insulation and, ultimately, the system itself. It reportedly was the judgement of the design engineers on this project that concrete or masonry manholes could not be made leakproof on a consistent or long term basis, and thus were not acceptable.

PittCon has offered no evidence in rebuttal of the Navy's explanation except for its claim that its UHD system should be deemed acceptable because it was approved under the applicable prequalification procedures. We have specifically held, however, that a restrictive specification in a solicitation for a UHD system is not improper merely because it may prevent an approved supplier from competing. Such a restriction is proper so long as it is shown to reflect the agency's minimum needs. See PhilCon Corp., supra. The record here shows that the pressure testable manhole requirement reasonably reflects the Navy's minimum needs. In view of this conclusion, we need not address the allegedly restrictive requirement for FRP pipe.

The protest is denied.

for 
Comptroller General
of the United States