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DECISION



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

FILE: B-206641.2; B-206728.2; **DATE:** December 30, 1983
B-207421.2
MATTER OF: PhilCon Corp.--Reconsideration

DIGEST:

1. Decision holding that an insulation specification was unduly restrictive is affirmed where the agency requests reconsideration based on the fact that the specification was not restricted to a single type of insulation, since the decision was based on the unjustified exclusion of the insulation used by the protester, not the fact that only one kind of insulation was acceptable.
2. GAO will not assume that plastic conduit is unsuitable for particular site conditions where nothing in the record supports such a conclusion, and an argument on reconsideration that GAO should have made this assumption.
3. Recommended cancellation of solicitation and resolicitation of requirement is rescinded where GAO is advised in agency request for reconsideration that at the time of issuance of its decision sustaining the protest, construction on the project already was substantially completed; corrective action under these circumstances is impracticable.

The Department of the Navy requests that we reconsider our decision PhilCon Corp., B-206641, et seq., April 12, 1983, 83-1 CPD 380, sustaining PhilCon's protests that certain specifications for underground heat distribution (UHD) systems in two solicitations for construction work were unduly restrictive. We affirm our decision, as modified below.

We sustained PhilCon's protest under IFB No. N62474-79-B-5541 (IFB-5541) because that solicitation required that the UHD system furnished be covered by a Tri-Service letter of acceptability (LOA), and that the system be constructed using calcium silicate insulation. The Tri-Service LOA requirement was unduly restrictive in our view because those LOAs became

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B-206641.2; B-206728.2; B-207421.2

The Navy's reconsideration request thus presents no basis for altering this portion of our original decision.

We sustained PhilCon's protest under IFB No. N62474-78-B-0780 (IFB-0780) on the ground that the Navy failed to adequately justify requirements that the UHD system be constructed with metallic conduit (the protective shell surrounding the carrier piping) and calcium silicate insulation. Since PhilCon's system was prefabricated with plastic conduit and, as already discussed, foam glass insulation, PhilCon was precluded from competing as a system supplier. The Navy report in response to the protest offered no explanation for its calcium silicate insulation restriction. As justification for the requirement that metallic conduit be used, the Navy reported in a brief manner that use of metallic conduit was considered "good engineering practice" since this conduit currently was in use at the site and had satisfactorily protected the existing UHD system from flash floods and earth movement. While we did not question the Navy's engineering determination that metallic conduit could perform, we found the Navy's explanation insufficient to justify the metallic restriction because the Navy presented no evidence that it ever had considered whether PhilCon's plastic conduit also could perform. We reasoned, simply, that the fact that metallic conduit is satisfactory does not establish that PhilCon's plastic conduit is unsatisfactory.

Again stating that it was unaware that the calcium silicate insulation restriction was in issue, the Navy argues in its reconsideration request that it would have been "contractually infeasible and destructive of the concept of prequalification" to specify PhilCon's foam glass insulation since only PhilCon has been approved for use of this type of insulation. (The Navy does not contend here, as it did in connection with IFB-5541, that the specification in IFB-0780 permits the use of any material other than calcium silicate for insulation.) The agency's reasoning escapes us. As already discussed, the insulation specification was restrictive because it precluded PhilCon from offering its prequalified UHD system. It was, and remains, our view that since the Navy appears unable to offer a substantial reason for excluding PhilCon's foam glass insulation, the insulation specification should have been drawn so that all prequalified suppliers, including PhilCon, could compete by offering the insulation with which their approved systems were constructed.

B-206641.2; B-206728.2; B-207421.2

section 236 of the Legislative Reorganization Act, 31 U.S.C. § 720, as adopted by Public Law 97-258--that we have modified our recommendation in this matter.

We affirm our decision as modified.

for *Harvey R. Van Cleave*
Comptroller General
of the United States