

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548***Kroy*  
28513**FILE:** B-213323**DATE:** June 12, 1984**MATTER OF:** Cleaver Brooks Division of  
Aqua-Chem, Inc.**DIGEST:**

Ten-year warranty requirement for boilers is not unreasonable where the record shows that the agency has a legitimate basis for requiring such a warranty.

Cleaver Brooks Division of Aqua-Chem, Inc. protests the inclusion of a warranty requirement in invitation for bids (IFB) No. DAKF57-83-B-0233 issued by Fort Lewis, Washington for replacement of a boiler. Cleaver Brooks contends that a warranty requirement in the solicitation prevents competition on an equal basis. We deny the protest.

The solicitation as originally issued required the contractor to supply a "wet-back" replacement boiler and provided that the boiler supplier warrant for 5 years the boiler's front and rear door refractory against failure. The solicitation was subsequently amended to permit the contractor to supply a "dry-back" boiler. This amendment also increased the term of the required warranty to 10 years.

A "wet-back" boiler has a rear wall in contact with the water in the pressure vessel of the boiler. A "dry-back" boiler's rear surface is in contact not with water in the pressure vessel but with the gases generated through combustion. The refractory is the heat-resistant material used to line the inside of the boiler.

Cleaver Brooks--a "dry-back" boiler supplier--filed a pre-bid opening protest with the contracting officer, challenging the propriety of the warranty requirement. The agency denied the protest and opened bids as scheduled. Seven firms bid on the solicitation.

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Cleaver Brooks and other boiler manufacturers were not among the seven firms submitting bids on the project, as they generally provide boilers to general contracting firms that submit bids for supplying and installing the boilers. Although not a bidder, Cleaver Brooks as a manufacturer and supplier of boilers for use by the prime contractor under the solicitation does have the requisite interest to protest the allegedly restrictive warranty provisions concerning the boiler. See Edison Chemical Systems, Inc., B-212048, March 27, 1984, 84-1 CPD ¶ 353.

The protester complains that the warranty requirement precludes competition on an equal basis between "wet-back" and "dry-back" boiler suppliers because a "wet-back" boiler has significantly less refractory material on its rear surface than does a "dry-back" boiler. Thus, the protester maintains, a warranty requirement of this type is more burdensome on the "dry-back" boiler supplier. Further, the protester states that the agency has singled out a design feature unique to "dry-back" boilers and applied strict warranty provisions to it while neglecting to do so in regard to features particular to "wet-back" boilers. In this connection, Cleaver Brooks points out that "wet-back" boilers often suffer from poor internal circulation because they are more difficult than "dry-back" boilers to inspect and maintain. The protester concludes that since the agency is not able to point to refractory problems with the "dry-back" boilers the protester has supplied the government in the past, there is no rational basis for the warranty requirement and it was included solely to discourage contractors from supplying "dry-back" boilers.

The Army states that it was concerned with possible refractory failure in "dry-back" boilers during the short-cycle, seasonal heating load conditions under which it intended to operate the boiler. According to the agency, the refractory material is susceptible to a condition known as thermal shock which can result from subjecting the refractory material to sudden changes in temperature. The stress on the material from this thermal shock can lead to refractory failure. The Army maintains that prior to including the 10-year warranty requirement in the solicitation, it investigated local users' experiences and determined that these users had experienced "early and costly refractory failure" with "dry-back" boilers.

The contracting agency has the primary responsibility for determining its minimum needs and for drafting requirements that reflect those needs. Romar Consultants, Inc., B-206489, Oct. 15, 1982, 82-2 CPD ¶ 339. Our standard in reviewing protests challenging agency requirements recognizes that it is the contracting agency that is most familiar with the conditions under which services or supplies have been and will be used. Thus, a protester who objects to an agency decision concerning the best method of accommodating its needs bears the heavy burden of showing that the decision was arbitrary or otherwise unreasonable. PittCon Preinsulated Pipes Corporation, B-209940.2, July 11, 1983, 83-2 CPD ¶ 70. Cleaver Brooks has not made that showing here.

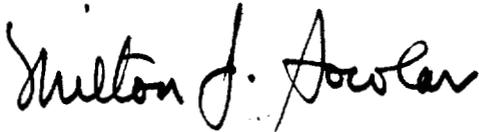
While it is clear that the agency increased the original 5-year warranty requirement on the refractory material to 10-years because it amended the specification to include "dry-back" boilers and that the 10-year requirement has more of an impact on "dry-back" boiler suppliers, Cleaver Brooks has not shown that the agency's concern about refractory failure in a "dry-back" boiler which will be subject to short-cycle use is unreasonable. It may be true, as the protester contends, that the government has not experienced significant failures in its existing "dry-back" boilers and has not before required such a long term warranty, but the protester has not shown that those installations were subject to the short-cycle operation which will be the case here. It is the problems anticipated because of the nature of this particular installation that appear to be the primary reason for the inclusion of such a strict warranty requirement. Further, the agency explains that it has not included warranty provisions that impact on the design weakness of "wet-back" boilers because such problems as those caused by poor internal circulation in "wet-back" boilers simply are not as costly to remedy nor as serious as refractory failure. The fact that a solicitation may make it more difficult for the supplier of a particular item to compete does not make the requirement unduly restrictive so long as the requirement is reasonable and necessary for the purpose intended. See Radix II, Incorporated, B-209476, March 1, 1983, 83-1 CPD ¶ 213.

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In short, while on its face a 10-year warranty may appear to be onerous, the protester has not shown that such a strict requirement is unreasonable under the particular circumstances surrounding this boiler installation. We therefore cannot object to that requirement.

Finally, Cleaver Brooks points out that the military specification mandatory for agency use in boiler procurements does not contain a warranty requirement. Neither that specification nor Defense Acquisition Regulation (DAR) § 1-1202 governing the use of such mandatory specifications precludes the inclusion of a warranty requirement in a particular solicitation. The inclusion of warranty provision is a matter within the procuring activity's discretion. See generally DAR § 1-324; Federal Acquisition Regulation Subpart 46.7, 48 Fed. Reg. 42,421-42,424 (1983) (to be codified at 48 C.F.R. Subpart 46.7).

The protest is denied.

for   
Comptroller General  
of the United States