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**DECISION**



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

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**FILE:** B-216472 **DATE:** March 25, 1985

**MATTER OF:** Superior Boiler Works, Inc.

**DIGEST:**

1. GAO dismisses protest alleging that certain specifications for boiler equipment are unduly restrictive, since the protester admittedly meets the requirements and thus is not an interested party under Bid Protest Procedures.
2. Agency's specification for discharge damper for boilers is not unduly restrictive where agency makes a prima facie showing that the specification is reasonable and necessary to meet its minimum needs and the protester fails to rebut this showing.
3. GAO denies protest alleging that only one manufacturer can collectively meet all specifications where the allegation is not clearly supported by the record. In any case, requirements that limit competition are acceptable so long as they represent legitimate agency needs.
4. GAO dismisses protest alleging that certain specifications for boiler equipment do not adequately describe the agency's minimum needs, since the protester admits that it cannot meet other specifications that do not unduly restrict competition. In these circumstances, the protester is not an interested party under Bid Protest Procedures.

Superior Boiler Works, Inc. protests that the specifications used in invitation for bids (IFB) No. 125-3K15-84 unduly restrict competition and are inadequate. The IFB, issued by the Department of Agriculture, solicited bids to furnish and install three boilers in area 3 at the

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Agricultural Research Center in Beltsville, Maryland. We dismiss the protest in part and deny it in part.

The primary contention of Superior, a boiler manufacturer and prospective supplier to the successful construction contractor, is that certain of the specifications impose requirements for features that--in their entirety--are only available from one boiler manufacturer, Cleaver Brooks. While other manufacturers can meet individual specifications, according to the protester, only Cleaver Brooks can meet them all. Superior also alleges that two specifications do not adequately describe the agency's minimum needs.

The IFB indicates that specifications are based upon equipment manufactured by Cleaver Brooks, although "an approved equal will be accepted." The Department of Agriculture awarded a contract to M&S Mechanical Corporation on September 28, 1984, and on February 13, 1985, the contracting officer approved the awardee's shop drawings, including Cleaver Brooks' boilers.

The record indicates that Superior itself currently meets four of the six specifications that it alleges are unduly restrictive, and that it can meet an additional one by special manufacture. We will not consider the propriety of the four specifications the protester admits it meets. A protest regarding these specifications is essentially on behalf of other potential suppliers that would be economically affected by their allegedly restrictive nature. Our Bid Protest Procedures, 4 C.F.R. § 21.1(a)(1984), require that in order for a protest to be considered, a protester must be an "interested party," as determined by the nature of the issues raised and the direct or indirect benefit or relief sought. See Kentucky Building Maintenance, Inc., B-196368, Jan. 16, 1980, 80-1 CPD ¶ 49. The other potential suppliers, not Superior, are the proper parties to complain about these specifications. Superior Boiler Works, Inc., et al., B-215836, et al., Dec. 6, 1984, 84-2 CPD ¶ 633.

We therefore dismiss Superior's protest concerning these specifications. We will, however, consider its protest concerning the alleged restrictiveness of the other specifications.

As a general rule, officials of a contracting agency, who are familiar with the conditions under which supplies, equipment, or services have been used in the past and will be used in the future, are in the best position to know the government's actual needs. Thus, such officials are best able to draft appropriate "brand name or equal" type purchase descriptions. American Sterilizer Co., B-202096, Sept. 4, 1981, 81-2 CPD ¶ 198. When a protester challenges a specification as unduly restrictive, the procuring agency must make a prima facie showing that the restriction is needed to meet its actual needs. If it does so, the burden shifts to the protester to show that the requirement complained of is clearly unreasonable. See Champion Road Machinery International Corp., B-206842, et al., Mar. 1, 1983, 83-1 CPD ¶ 203. Moreover, a contracting agency properly may establish specifications based on its actual experience. Lucas Machine, Division of Litton Industrial Products, Inc., B-212982, Feb. 22, 1984, 84-1 CPD ¶ 217.

The allegedly restrictive specifications that Superior cannot meet and thus concludes are overly restrictive are (1) the requirement that each boiler's forced draft blower have "a discharge damper of the high pressure drop type providing high turbulence" and (2) that each boiler's door fastening method is of "heavy duty cap screws which thread into replaceable nuts." A fastening in which studs are welded to the boiler is not acceptable, according to the solicitation.

As to the discharge damper requirement, the agency states that its experience with this feature "has shown it to be virtually maintenance free" and, therefore, necessary. Concerning the boiler door fastening method, the agency states the reason for cap screws is "[r]eplaceable nuts are easier to replace, and the same bolt can usually be used." According to the agency, if a threaded hole becomes stripped, the hole must be rethreaded and a larger bolt used.

In our view, the agency's justification for the forced discharge damper requirement is reasonable on its face. The protester has not persuasively rebutted the agency justification and, thus, has failed to meet its burden of showing that the specification is unreasonable.

The agency has not fully addressed the protest on the boiler door fastening method since it has not indicated why studs welded to the boiler are not an acceptable door fastening method. See Cleaver Brooks, B-213000, June 29, 1984, 84-2 CPD ¶ 1. However, because the requirement for the forced draft blower with discharge damper legitimately precludes Superior from offering its standard equipment, and because Superior states that it can meet the door fastening requirement by special manufacture, we cannot find that the firm was prejudiced by the specification as written.

As for the protester's allegation that only one manufacturer can collectively meet all of the protested specifications, this is not clear from the record. Agriculture received eight bids in response to the IFB. It does not know what boiler(s) these bidders would have offered, however, since only the successful contractor was required to provide shop drawings at some point after award.

In supplemental information requested by this Office, the agency states that before issuance of the solicitation, representatives of Kewanee, Superior, and York-Shipley indicated that they could manufacture boilers to meet the specifications, although their standard boilers would need modification. Additionally, the agency states that four other manufacturers indicated they could manufacture boilers that would require little or no modification to comply with the specifications. Those manufacturers are Cleaver Brooks, Continental 4 pass unit I.C. burner, Eclipse, and Nebraska Boiler with I.C. burner.

From the record before us, we cannot conclude that the protester has shown that the specifications are drawn in such a manner as to preclude any product but that manufactured by Cleaver Brooks. See American Sterilizer Company, supra. While specifications should be drawn so as to maximize competition, we have held that requirements which limit competition are acceptable so long as they represent legitimate agency needs. In short, a contract awarded on the basis of those needs would not violate law by unduly restricting competition. Lucas Machine, Division of Litton Industrial Products, Inc., supra. Moreover, the fact that one or more potential suppliers may be precluded from competing does not render the specifications unduly restrictive if they represent the legitimate needs of the

agency. Bowne Time Sharing Inc., B-190038, May 9, 1978, 78-1 CPD ¶ 347. We therefore deny the protest on these bases.

Finally, Superior contends that two specifications of the boiler control panel did not adequately describe the agency's minimum needs and prevented bidders from competing on an equal basis. Those specifications require that the indicating lights and switches of the panel be "mounted in a hinged drop-panel for easy access to all wiring" and that the control panel be in a "dustproof enclosure." Since the protester admits that its boiler cannot meet the requirement for a discharge damper, which we have found does not unuly restrict competition, the firm does not qualify as an interested party for protesting that other specifications are inadequate. Swintec Corp. et al., B-212395.2 et al., Apr. 24, 1984, 84-1 CPD ¶ 466, aff'd on reconsideration, Aug. 13, 1984, 84-2 CPD ¶ 161. This is so because Superior could not qualify for award even if it prevailed on its protest concerning the alleged inadequacies in the specifications. Id.

Accordingly, the protest is dismissed in part and denied in part.

*for* *Seymour Efron*  
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General Counsel