



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Soletanche, Inc.

File: B-227032

Date: June 26, 1987

DIGEST

Protest that specification requiring a particular method for certain dam construction work is unduly restrictive of competition is denied, where protester disagrees with the agency about the merits of the method it proposes to use, but has not shown that the requirement is clearly unreasonable.

DECISION

Soletanche, Inc., protests the specifications in request for technical proposals (RFTP) No. DACW67-87-R-0002, issued by the Army Corps of Engineers for the design and construction of a concrete cutoff wall and associated work at Mud Mountain Dam, Washington, under a firm, fixed-price contract. The cutoff wall is required to stop water seepage problems in the core of the dam, a 425-foot high earth and rockfill structure, which serves as the major flood control element for the Puyallup River Basin.

We deny the protest.

The RFTP, the first step of a two-step sealed bid procedure, requested the submission of technical proposals, based on procedures and equipment of the offeror's choosing, for the determination of whether the offeror's engineering approach and construction and testing procedures were acceptable under the RFTP's technical requirements. The RFTP specified a method of construction for the deepest part of the dam using both primary and secondary elements. As explained in the RFTP, a primary element is a drilled excavation of circular cross sections into which a structural steel member is inserted. The structural steel member then is embedded in a concrete backfill material, and serves as a guide for excavation of the secondary element. The primary elements are installed at alternate locations along the cutoff wall

alignment, and excavation for the secondary element is performed to full depth between the two steel guides of the primary elements.

Soletanche filed its protest with our Office on April 14, 1987, the day before proposals were due. Soletanche nevertheless submitted a proposal by the closing date, as did five other offerors; Soletanche's technical proposal included the use of primary element guides.

Soletanche contends that the RFTP unnecessarily restricts competition by requiring the use of cased primary elements and structural steel for guiding secondary elements. Soletanche requests that the RFTP be amended to permit consideration of Soletanche's Hydrofraise excavation system,^{1/} which does not require primary elements, and which allegedly has several advantages over the traditional method required by the RFTP.

The Corps states that the concrete cutoff wall is to be constructed from the top of the dam extending vertically downward through the core of the dam and into the bedrock at the dam's base. Because the cutoff wall will be constructed at near record depths (in excess of 400 feet) and will encounter overhanging hard-rock ledges in the steep walls of the narrow canyon, the Corps states that good contact with the canyon walls and continuity of the cutoff wall are crucial to provide for the greatest reliability against seepage throughout the operational life of the project. After exploring alternatives, the Corps determined that the primary-secondary element approach, a proven method of construction, in the Corps' opinion, that was successfully used at two other dams, would provide the greatest assurance of continuity of the cutoff wall and good contact with the canyon walls.

The Corps also states that it considered, but rejected, Soletanche's Hydrofraise method because it understands that this method of construction, without guides, has only been used at a depth of 290 feet and has never been used in a situation where there was hard rock, steep canyon walls and a depth of more than 400 feet. The Corps notes that

^{1/} The Hydrofraise excavation system uses a drilling machine powered by three down-the-whole motors with reverse mud circulation; a pump that excavates the loosened soil; a heavy crawler crane which supports and manipulates the drilling machine; and a guide frame with a suspended hydraulic feed cylinder.

Soletanche was not prohibited from using the Hydrofraise method at shallower depths.

The protester concedes that continuity and verticality are essential attributes of any construction method selected, given the depth and steep hard rock walls through which the cutoff wall is to be constructed, but maintains that the Hydrofraise excavation system effectively meets the RFTP requirements in those respects. Soletanche further complains that the Corps, in its protest report, has failed to provide any evidence that the continuity and verticality requirements cannot be satisfied by the Hydrofraise system, and that the Corps' consultant, in his evaluation of alternatives, focused on difficulties encountered by an earlier version of the Hydrofraise method and mistakenly assumed that the current Hydrofraise version would be subject to similar limitations. Finally, Soletanche contends that the Corps' selected method has never been employed at depths approaching the 400-foot height of Mud Mountain Dam, and that another government agency selected the Hydrofraise panel method for construction of a 400-foot cutoff wall at the Navajo Dam.

When a protester challenges specifications as being unduly restrictive, the contracting agency must make a prima facie showing that the agency requires the restriction to meet its actual needs, that is, it must furnish an explanation that withstands logical scrutiny. This is so because contracting officials obviously are in the best position to know the government's actual needs and the best method of accommodating them. American Science and Engineering, Inc., B-225161.2, Mar. 5, 1987, 87-1 C.P.D. ¶ 252. If the agency provides the necessary support for its requirements, the burden shifts to the protester to show that the requirements are clearly unreasonable. Nupla Corp., B-225545, Mar. 6, 1987, 87-1 C.P.D. ¶ 264. Soletanche has not met that burden.

The record indicates that neither the selected method nor the Hydrofraise method has been used for a concrete cutoff wall at the near record depth involved here. Even if the Hydrofraise method is, as Soletanche maintains, a more advanced method technologically, and another government agency has selected that method for the construction of a 400-foot cutoff wall at another dam, we do not think the Corps should be required to risk using that method at Mud Mountain in lieu of a more proven--albeit, in Soletanche's view, also risky--construction method. With regard to the selection of Hydrofraise by another agency, we have recognized that each procurement is a separate transaction and the action taken on any one procurement does not govern the

conduct of all similar procurements. JLS Rentals, B-219662, Nov. 20, 1985, 85-2 C.P.D. ¶ 570. We also note that the contract for the 400-foot cutoff wall at the Navajo Dam only recently was awarded to Soletanche, so the Corps would not have been able to evaluate the use of the Hydrofraise method at the 400-foot depth. Soletanche's disagreement with the agency's technical judgments as to why the Hydrofraise method is unsuitable for the work at the deepest part of the dam simply does not establish that the RFTP requirement is unreasonable. HoseCo., Inc., B-225122, Mar. 6, 1987, 87-1 C.P.D. ¶ 258.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel