

J. Vickers



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Viereck Company
File: B-239735
Date: September 12, 1990

Donald W. Roeder for the protester.
S. J. Evans, Assistant Administrator for Procurement,
National Aeronautics and Space Administration, for the
agency.
James Vickers, Esq., and John Brosnan, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest alleging that specification requiring 10 RPM low spindle speed for machining center was unduly restrictive of competition is denied where the contracting agency has offered a reasonable explanation for the requirement.

DECISION

Viereck Company protests the use of a brand name or equal purchase description citing the "Bayer Industries ACROLOC A15-40 Computer Numeric Controlled Vertical Machining Center as the brand name item" in invitation for bids (IFB) No. 9-WSRE-02-0-13B, issued by the National Aeronautics and Space Administration (NASA). The machining center is to be used at the White Sands Test Facility, Las Cruces, New Mexico to meet its machining requirements.

The solicitation listed 20 salient characteristics of the Bayer machining center that an "equal" machine had to meet to be considered for award. It also listed a number of characteristics that each of the several required accessories must possess. These accessories were also solicited on a brand name or equal basis.

Viereck contends that NASA should have stated its requirements in terms of functions to be performed rather than as specific design characteristics of a particular brand of machine which Viereck states made the procurement in essence a sole-source to Bayer Industries. More particularly, Viereck objects to the requirement in the

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salient characteristics which states that the machine must have a low spindle speed of 10 revolutions per minute (RPM) or less.

The agency responds by stating that it used a brand name or equal purchase description because it was unable to prepare a specification that would adequately detail the complex computer interfaces needed to produce a machine that would meet its specialized super-alloy machining requirements within a reasonable time and that it knew that Bayer Industries' machine did, in fact, meet its needs. As far as the specific salient characteristic that the protester challenges--the 10 RPM spindle speed--is concerned, the agency explains that such a low speed is required to produce the high quality finish it needs on the very hard nickel-based alloys that it must machine.

Part of Viereck's protest is centered on its generalized objection to the use of the brand name or equal purchase description since, in the protester's view, the agency could have used a purchase description stated in terms of the function or the performance needed. It appears from the record that the machine which the protester wishes to offer, the Hurco Model BMC-40, will not meet the 10 RPM spindle speed requirement set forth in the solicitation, since its low spindle speed is 30 RPM. We will therefore resolve the protester's specific objection to the spindle speed requirement first since, if that is a reasonable expression of the agency's minimum needs and the protester's machine cannot meet that requirement, the protester has no basis upon which to complain about the general format of the brand name or equal purchase description. See Gel Sys., Inc., B-234283.2, Aug. 22, 1989, 89-2 CPD ¶ 166.

The 10-RPM spindle speed is necessary, according to NASA, because of the materials that are being machined at the White Sands Test Facility. The agency reports that 20 percent of its machining requirements involve very hard nickel-based alloys, also called "super alloys," and states that the test facility needs machined parts that have very tight tolerances. According to the agency, a high quality finish is necessary in order to maintain such close tolerances. NASA states that this finish can be obtained on the hard alloys using a high speed steel tool at 10 RPM or less without the need for additional polishing. A piece which is machined at, for example, 30 RPM spindle speed requires additional labor for polishing to achieve the desired finish. The agency states that while the high speed steel tool should ideally be used at 6 to 9 RPM to achieve the high quality finish required, 10 RPM can still be used

and was specified in an attempt to broaden the competitive field.

Viereck argues that the restrictiveness of the 10-RPM spindle speed requirement is illustrated by the fact that 24 firms were sent the IFB but only one response, offering the brand name model, was received. Also, Viereck states that if the very hard nickel-based alloys only constitute 20 percent of the test facility's requirements, NASA should have procured a machine that would perform the other 80 percent and accept the minor sacrifices that apply to the 20 percent. The protester points out that surface finish is determined by factors other than spindle speed such as cutter geometry, tool radius, rake angle, feed rate and coolant, and argues that different quality finishes will result from changes in these elements and, therefore, the specifications should have been written in terms of performance required rather than by a particular design characteristic.

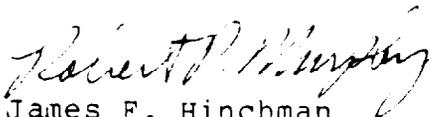
In general, although specifications should be drawn so as to maximize competition, the determination of the minimum needs of the government, the best methods for accommodating such needs and the drafting of specifications which reflect these needs are primarily the responsibility of the contracting agency, which is most familiar with the conditions under which the supplies have been and will be used. Roofing Servs. Inc., B-237595, Feb. 27, 1990, 90-1 CPD ¶ 240. Specifications based upon a particular product are not improper in and of themselves, and we will not object to a specification that is "written around" design features of a particular item where the agency establishes that the specification is reasonably related to its minimum needs. Gel Sys., Inc., B-234283, May 8, 1989, 89-1 CPD ¶ 433.

The agency has reasonably justified its requirement for the 10 RPM or less low spindle speed because of the material which will be processed on the machining center. We think that the agency has shown that the test facility has a need for highly finished nickel-based alloy machine parts which it has found through past experience can be produced with less labor on a machining center which has the capability of machining at a very low RPM. While the agency agrees with the protester's position that the desired finish is the function of several factors in addition to spindle speed, it has determined that the spindle speed factor is the most significant one and has decided that by specifying a particular speed it can avoid a lengthy detailed statement of functional requirements with the attendant risk of misunderstanding by offerors and receipt by it of a machine that does not meet its actual needs. We find nothing in the

record which leads us to conclude that the agency has acted unreasonably in choosing to express its needs in terms of a low spindle speed.

We also do not agree with Viereck's suggestion that NASA accept a machining center which satisfactorily processes 80 percent of its requirements and accept "minor" sacrifices on the remaining 20 percent of its work involving the super-hard alloys. While other firms may have been able to compete if the specifications were relaxed, the agency's needs include working with the super alloys. We see no reason why the agency should have to purchase a machinery center that meets only a portion of its needs simply because the agency could make up for the machinery inadequacy through what clearly would be less efficient means.

In short, we see nothing in the specifications that exceeds the agency's minimum needs. Thus, the fact that the agency used a design specification is not objectionable. See Lanier GmbH, B-216038, May 10, 1985, 85-1 CPD ¶ 523. Since we find the agency's requirement for a low spindle speed of 10 RPM is proper, and since the machine proposed by Viereck does not meet that standard, we deny the protest.

for

James F. Hinchman
General Counsel