



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

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B-178603

October 11, 1973

Rosco Manufacturing Company
4701 Sangamore Road
Washington, D.C. 20016

Attention: Mr. Harold J. Freund
Government Sales

Gentlemen:

By letter dated July 24, 1973, and prior correspondence, you protested the use of an allegedly restrictive specification in two solicitations issued by the Forest Service, United States Department of Agriculture. The first solicitation was canceled subsequent to the protest because of an ambiguity in its terms. Pursuant to a determination of urgency, a contract was awarded under the resolicitation on June 28, 1973, to E. D. Etnyre and Company. Since the issue is the same with regard to both solicitations, we have considered your protest in the context of the latter solicitation.

Solicitation 3-73-33 was issued by the Forest Service on June 4, 1973, for an asphalt distributor. The solicitation included a requirement for an inside tank closing valve, and it is this provision which you contend is restrictive.

The reasons given in the administrative report for the inclusion of this specification are primarily safety related. The Forest Service states that an inside valve is always free to open and close since it is submerged in hot fluid asphalt, whereas an outside valve is exposed to cold weather and subject to plugging because of hardening of the asphalt. When this occurs, it is necessary to apply heat to melt the plug. This is accomplished either with a blow torch or burning oil-soaked rags. The Forest Service states that this procedure is costly in terms of wasted manhours and hazardous to men, equipment and surrounding timber.

It is your position that the design employed in your asphalt distributor is equal to or better than that specified. You contend that plugging does not occur in your outside valving arrangement because the material inside is constantly circulating, thereby

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making plugging impossible. Furthermore, you state that all distributors are equipped with numerous shut-off valves which will be inoperative due to hardened asphalt unless the material is kept circulating. You further contend that although other manufacturers could easily include an inside closing valve, you could not do so without completely redesigning your units. Therefore, you argue that this requirement effectively excludes your firm from competing on procurements for this item even though your product is equal to or better than those with an inside closing valve.

The Forest Service maintains that your design system, in which the asphalt circulates continually, is impractical for its needs because the machine would have to be kept running overnight to prevent plugging. In reply, you have asserted that all distributors are equipped with "numerous out-side shut-off valves" which will become inoperative unless the asphalt is kept circulating. As we understand the functioning of an inside closing valve, however, it shuts off the flow of fluid to all outside valves. These outside valves can then be drained of asphalt, which eliminates the possibility of plugging since there is nothing left in the valves which can harden. Therefore, we are unable to conclude that your design system is equal to or better than one with an inside closing valve for the needs of the Forest Service.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States