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**DECISION**



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

FILE: B-204595

DATE: January 18, 1982

MATTER OF: Municipal & Industrial Pipe  
Services Ltd.

**DIGEST:**

Protest against award of contract--on basis that solicitation specifications are exclusionary in nature since specification requirements can only be met by products manufactured by one company, even though other products will meet Government's needs--is denied since there was adequate competition, specified product meets Government's needs, and there is no showing that the Government's limiting the procurement to one material was unreasonable.

Municipal & Industrial Pipe Services Ltd. (MIPS) protests any award of a contract under solicitation No. DAAH03-81-B-0142, issued by the Department of the Army, Redstone Arsenal, Alabama, for internal cleaning, TV inspection, testing and sealing of sanitary sewers. The protester alleges that section "2PPP" of the specifications, entitled "Sewer Line Sealing," is "proprietary, sole source and exclusionary in nature and is unrelated to performance requirements." This specification requires that a polyurethane-based grout be applied to leaking or weak sewer pipe joints. Award is being withheld pending resolution of this protest.

The protester contends that the specified grout is manufactured only by 3M, and that while the 3M product is not specifically mentioned, the specifications can only be met by 3M products. The procuring activity refuses to amend the specifications to permit the protester to apply an acrylamide grout. MIPS contends

that there are several chemical grouts, including the specified grout, which will meet the Government's needs and that by specifying one type of grout, many potential bidders are excluded.

The Army admits that the specified grout is manufactured only by 3M. However, the Army points out that the sealant called for by the specifications meets its needs; whereas, the acrylamide grout offered by MIPS does not meet these needs. According to the procuring activity, the specifications in question were developed by an independent engineering firm after more than a year of detailed study involving field testing, measurements and data analysis. The Army further states that the sealant specified is less toxic and far safer to handle than other types of sealants. Finally, the Army contends that there was adequate competition--33 solicitations were sent out and six responses were received; MIPS was the only potential bidder who complained about the specifications covering the sealant.

We deny the protest.

Our Office has consistently held that contracting agencies are primarily responsible for determining and accommodating their minimum needs. The agencies are in the best position to ascertain their needs due to familiarity with particular requirements and the environment in which the product will be used. Thus, our Office will not question an agency's determination of its minimum needs, or the technical judgment forming the basis for that determination, unless it is clearly shown to be unreasonable. Interscience Systems, Inc., B-201890, June 30, 1981, 81-1 CPD 542. Also, See Schreck Industries, Inc., B-184127, October 15, 1975, 75-2 CPD 235. After reviewing the record, we find that the agency has supported the need for the specified grout.

The basis for the choice of polyurethane grout over acrylamide grout was as follows:

1. Polyurethane grout seals pipe joints by filling the joints and enveloping

- the pipe. Unlike acrylamide grout, it does not have to permeate and stabilize the soil surrounding the pipe joint;
2. The cherty or flinty clay soil at the Redstone Arsenal tends to be impermeable and to change volume with normal variations in moisture content. Polyurethane grout will accommodate these soil characteristics much better than acrylamide grout;
  3. Polyurethane grout is tougher and more pliable than is acrylamide grout, has more tensile strength and is more resilient. Therefore, it will perform as a gasket and will not crack, crumble and fragment when shrinking due to decrease in moisture content;
  4. Polyurethane grout will not crack or crumble when dried; whereas, acrylamide will crack when dried and the cracks will not reseal when the material expands as moisture content increases. Also, acrylamide grout will crumble and fall out of the pipe joint leaving only the stabilized soil outside the pipe to seal any leak which may or may not be continuous and in full contact with the pipe;
  5. Polyurethane grout, unlike acrylamide, has good adhesive properties and will adhere to pipe surfaces to help seal the joint and keep the grout gasket in place; and
  6. The specified product is less toxic and safer to handle.

The procuring activity expressed the view that the cherty or flinty clay in the soils in the Redstone Arsenal area causes large variations in the elevation

of ground water during the different seasons of the year; therefore, any sealant applied would require specified adhesive properties--adhesive meaning the material's ability to hang together and remain in contact with the pipe joint without shrinking, drying out or cracking when subjected to wet and dry cycles. MIPS did furnish a copy of a report on the use of acrylamide-based grout by the city of Hollywood, Florida, where the soil was subject to alternate wet and dry conditions, resulting in severe fluctuations in the ground water level. According to the report, which covered a small section of the city's sewer system which was uncovered to inspect the sealant, the acrylamide grout showed no signs of deterioration, even though it had been in place for 6 years. However, this report loses some of its persuasiveness when viewed in light of the fact that the city of Hollywood replaced the acrylamide-based grout with a polyurethane grout.

Also, MIPS furnished us copies of statements from technical experts and other reports indicating that the acrylamide-based grout did not shrink, dry out or crack when subject to wet and dry cycles. However, the record indicates that several engineers familiar with both grouts are of the view that the polyurethane grout is superior to the acrylamide grout in those situations requiring either tensile strength or resistance to wet-dry cycles. In this regard, it should be pointed out that where there might be ground shifting around the pipe joints, such as would be caused by vibrations resulting from the testing of large rocket engines at Redstone Arsenal, tensile strength is an important factor. Also, one engineer familiar with both grouts stated that he had tried an acrylamide grout in clay soil, such as at the Redstone Arsenal, and it did not work well. He stated that the acrylamide grout tended to crystallize, which could cause a loss of the seal, and that it was only fair in filling void areas. While MIPS did introduce evidence indicating that the acrylamide-based grout did not shrink, dry out or crack when subjected to wet-dry cycles, the evidence of record overwhelmingly supports the contrary view.

Regarding the statement of the procuring activity that the sealant described by the specifications is less toxic and far safer to handle than other types

of sealants, MIPS states that all grouts presently available for sewer rehabilitation are toxic and, in the case of 3M polyurethane grout, also flammable. MIPS quotes the warning language in 3M's descriptive literature relating to the avoidance of excessive exposure to vapors from the grout and the recommendation that protective clothing be worn when handling the grout. A review of the descriptive literature for the 3M products, as well as four other sealants, indicates that all of the sealants are hazardous, to a degree, in an uncured state. However, other information indicates that an acrylamide grout is significantly more toxic than polyurethane grout. It also appears that the safety precautions are more extensive for the acrylamide grout than they are for the polyurethane grout.

MIPS states that recently an identical project at Fort Jackson, South Carolina, was also protested on the same basis as the present procurement and the contracting officer determined that the specifications were restrictive; an addendum was issued allowing the use of both polyurethane and acrylamide grout. MIPS states that as a result of being able to use acrylamide grout, the low bidder reduced its cost by \$70,000. MIPS also points out that the city of Huntsville, Alabama, on one of its projects, also broadened the specifications to include acrylamide grout as well as polyurethane grout.

According to the procuring activity, the Fort Jackson case did not go to the merits; instead, the engineers decided to permit the use of acrylamide because the funding authorization for the project was about to expire. The engineer also stated that the \$70,000 reduction in cost was not due to the change in grout, but to the lifting of the small business (8a) restriction between the first and second solicitation. He stated that he thought that the price of the two grouts was about the same. The engineer also pointed out that the soil was much sandier around Fort Jackson than at the Redstone Arsenal. Also, the city engineer for the city of Huntsville stated that the city decided to broaden its specifications to include acrylamide so that the project

could proceed before the onset of winter, but that he considered polyurethane grout to be better than the acrylamide for the area and that the low bidder was going to use the polyurethane grout.

Furthermore, the Environmental Protection Agency decided two protests involving the same situation as in the present case in favor of the specified grout. In the first case involving the city of Hallendale, Florida, it was determined that the city had adequately substantiated the basis for its specifications which specified a single material (a polyurethane grout), that its decision had a rational basis, and that there had been adequate competition allowing for the needs of the project. In the second case, it was also determined that the specifications were not restrictive.

We recognize that specifications should state only the actual minimum needs of the Government and should not have any restrictive features which might limit acceptable offers to one supplier's product, or the products of relatively few suppliers. However, this does not prevent specification of requirements for supplies which possibly only one supplier is able to produce, provided these requirements meet the minimum needs of the Government. See United Paint Manufacturing, Inc., B-181163, June 25, 1974, 74-1 CPD 343. While it appears from the record that 3M is the only firm which manufactures the grout called for by the specifications, there are at least three major distributors of the product and each has dealers who compete against each other in the commercial market. Furthermore, according to the agency, a minimal investment compared to the prices bid for the project would permit the application of the specified material by any interested firm. Finally, in this regard, we observe that the specified grout relates to supplies only and does not preclude the protester from competing.

In light of the fact that the sealant called for by the specifications did meet the Government's minimum needs and there was adequate competition, we find that the actions of the procuring activity were reasonable.

Accordingly, we deny the protest.

*for*   
Comptroller General  
of the United States