

DECISION



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

27015

FILE: B-211587; B-211587.2 **DATE:** December 13, 1983

MATTER OF: Champion Road Machinery International
Corporation; Border Machinery Co.

DIGEST:

1. Allegation that the solicitation was a sole-source procurement under the pretense of being competitive because only one bidder offers a "lock-unlock differential" for a motor grader as required by the specifications is unfounded where, in fact, two bidders offered the required lock-unlock differential.
2. Where purchasing agency shows that specification restriction requiring that motor grader have a lock-unlock differential is prima facie reasonable and the protester fails to show that this requirement is clearly unreasonable, the specification is not unduly restrictive of competition.
3. Allegation that the solicitation was a sole-source procurement under the pretense of being competitive because only one bidder offers a motor grader with a "successive gear type transmission" as required by the specifications is unfounded where two bidders who made no bid on the particular bid item involved have offered a motor grader with a successive gear-type transmission under a previous solicitation.

Champion Road Machinery International Corporation (Champion) and Border Machinery Co. (Border) protest the award of a contract under invitation for bids (IFB) No. NA600-9524, issued by the Navajo Area Office of the Bureau of Indian Affairs (BIA), Department of the Interior (Interior), to Empire Machinery Company (Empire) for two motorized road graders in accordance with federal specification 00-G-630E (specification).

We deny the protests.

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Bid Item No. 1

Bid item No. 1 of the IFB solicited bids for a type II, size 5 road grader. Section 3.3.4 of the specification regarding type II graders provided in part: "A lock-unlock drive train differential shall be provided." BIA reports that Empire and John Deere & Co. (John Deere) offered a lock-unlock drive train differential in their descriptive literature, while Champion and Border offered an "automatic no-spin differential." The contracting officer rejected the bids of Champion and Border as nonresponsive because both bidders failed to offer a lock-unlock drive train differential as required by the specification. John Deere's bid was also rejected as nonresponsive because the bidder listed a 120-day delivery period rather than a 90-day delivery period as required by the IFB. The contracting officer then recommended that award be made to Empire as the low, responsive bidder on bid item No. 1.

Champion and Border both argue that the BIA has written a set of specifications that only Empire can meet and that the IFB, as to bid item No. 1, was a sole-source procurement under the pretense of being competitive.

However, we note that John Deere's descriptive literature states that John Deere's road grader includes a lock-unlock differential. Neither Champion nor Border presents any evidence that John Deere does not offer a lock-unlock differential. We find that John Deere and Empire both offered road graders that complied with the specification and, therefore, the IFB, as to bid item No. 1, was not in actuality a sole-source procurement.

Champion also contends that the intent of section 3.3.4 of the specification is to require a lock-unlock device which will not allow the grader to spin out on one side of the drive wheels when operated in a straight line direction and will minimize wheel scuffing of the drive wheels when making a turn. Champion claims its no-spin device performs the same functions. Thus, Champion contends that its no-spin device is "equal" to the lock-unlock device required by the specification and suggests that this Office seek the

technical advice of two government employees responsible for writing, coordinating, and interpreting federal specifications as to whether the no-spin differential meets the requirements of the specification.

BIA argues that a no-spin differential does not meet its minimum needs because a no-spin differential operates either fully engaged or fully disengaged intermittently without any control on the part of the operator which could cause skidding under certain conditions. The no-spin differential could also propel the grader forward under certain conditions when trying to turn.

The determination of the government's minimum needs and the best method of accommodating those needs is primarily the responsibility of the contracting agencies. We have recognized that government procurement officials, since they are the most familiar with the conditions under which supplies, equipment or services have been used in the past and how they are to be used in the future, are generally in the best position to know the government's actual needs. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. However, when a protester challenges a specification as unduly restrictive of competition, the burden is on the procuring agency to establish prima facie support for its contention that the restrictions it imposes are needed to meet its minimum needs. But, once the agency establishes this prima facie support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable. Champion Road Machinery International Corporation, B-206842, B-206847, March 1, 1983, 83-1 CPD 203.

While Champion has set out why it believes its no-spin differential performs as well as the lock-unlock differential, we find that BIA's specific arguments as to why the no-spin differential does not meet its minimum needs provide prima facie support for requiring that bidders offer a lock-unlock differential. Champion's contention that BIA's arguments are untrue is unsupported by any evidence. Regarding Champion's request that we investigate, it is not our policy as part of our bid protest function to conduct an

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investigation to determine the accuracy of a protester's statements. Todd Logistics, Inc., B-203808, August 19, 1982, 82-2 CPD 157. Further, Champion's unsupported allegation does not satisfy its burden of affirmatively proving its case. See Systems Engineering Associates Corporation, B-208439, January 31, 1983, 83-1 CPD 97. We therefore find that Champion has failed to show that the requirement to offer a lock-unlock differential is clearly unreasonable, and we deny the protest on this issue.

Bid Item No. 2

Bid item No. 2 of the IFB solicited bids for a type II, size 7 road grader. The IFB required a "successive gear type transmission." Champion offered another type of transmission, and the contracting officer rejected Champion's bid as nonresponsive. John Deere and Border made no bid on bid item No. 2, leaving Empire as the only responsive bidder. The contracting officer recommended that award be made to Empire as the low, responsive bidder.

Champion again contends that the BIA has written a set of specifications that only Empire can meet and that the IFB, as to bid item No. 2, was a sole-source procurement under the pretense of being competitive.

We note that in Champion Road Machinery International Corporation, supra, which involved the same specification requiring a successive gear-type transmission, Border, John Deere, and Empire all submitted bids offering a successive gear-type transmission. While Border and John Deere made no bid on bid item No. 2, we believe that the fact that they offer a successive gear-type transmission demonstrates that companies other than Empire can meet this specification and, therefore, the IFB, as to bid item No. 2, was not in actuality a sole-source procurement.

The protests are denied.

Milton J. Auster
for Comptroller General
of the United States