

DECISION

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

FILE: B-213000

DATE: June 29, 1984

MATTER OF: Cleaver Brooks

DIGEST:

Protest against specification restricting procurement of heating boilers to three-pass wet-back boilers, thereby excluding protester's four-pass dry-back boilers, is sustained since agency has not established prima facie case that the restriction was reasonably related to its minimum needs.

Cleaver Brooks protests that the specifications used in invitation for bids (IFB) No. F30617-83-B0011 are unduly restrictive of competition. The IFB was issued by the Department of the Air Force and asked for bids to provide two three-pass full wet-back boilers to heat aircraft hangars. Cleaver Brooks, which manufactures four-pass dry-back boilers, contends that the restriction limiting the competition to the specified boilers was not justified by the minimum needs of the agency. In essence, the agency's reason for eliminating dry-back boilers from its specification was that these boilers are of lower quality than the wet-back type and bear a higher life-cycle cost as a result.

We sustain the protest.

Initially, we point out that contracting agencies have broad discretion in determining their minimum needs and the best methods of accommodating those needs. Potomac Industrial Trucks, Inc., B-204648, Jan. 27, 1982, 82-1 CPD ¶ 61. Where the protester challenges a specification as unduly restrictive of competition and provides some support for that proposition, the burden is on the procuring agency to establish prima facie support for its position that the restriction imposed was necessary to

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meet its minimum needs. Gerber Scientific Instrument Company, B-197265, April 8, 1980, 80-1 CPD ¶ 263; Philadelphia Biologics Center, B-209660, June 1, 1983, 83-1 CPD ¶ 589. In our review of the issues, we examine the adequacy of the agency's position not simply with regard to the reasonableness of the rationale asserted but also the analysis given in support of those reasons. R.&H. General Contractors, Inc.; Reynolds Aluminum Building Products Company, B-208776; B-208776.2, June 8, 1983, 83-1 CPD ¶ 625. Once the agency establishes prima facie support for its restriction, the burden shifts back to the protester to show that the restriction is clearly unreasonable. Walter Kidde, Division of Kidde, Inc., B-204734, June 7, 1982, 82-1 CPD ¶ 539. Here, we find that the Air Force has not established a prima facie case for the restriction.

Cleaver Brooks emphasizes that it is not challenging the performance requirements of the specification but only the requirement that the boilers be of the three-pass wet-back design, which precludes Cleaver Brooks from competing. In this respect, Cleaver Brooks points out that the military specification for boilers (MIL-B-174752C, 5 March 1979), which does not limit the design to the wet-back type boiler, was not used for this procurement. Cleaver Brooks insists that no sound engineering reason exists for the restriction and that the Air Force has not supported this restriction with anything other than conclusions.

Cleaver Brooks also states that when it recently protested a similar restriction to the Army concerning a procurement conducted at Fort Lewis, Washington, its protest was sustained. The decision found that the life-cycle cost evaluations used by the Army to justify the restriction were not valid and led to the erroneous conclusion that the dry-back boilers were more expensive than wet-back boilers.

The Air Force, in support of its specification, first points out that even though the military specification is mandatory, it need not use it when "nationally recognized and industry technical source specifications and standards are available." Defense Acquisition Regulation § 1-1202 (b)(ii). It has not, however, even at our specific request, identified the nationally recognized and industry

technical source specifications and standards on which it relied for its decision not to use the military specification.

In further support of the specification, the contracting officer contends that the Cleaver Brooks dry-back boiler¹ is less expensive than wet-back boilers, is not of the required quality and would not work as efficiently or as long as the wet-back boilers. The contracting officer states that this conclusion is based on the advice of the base engineer and a consulting engineer who had been retained for this project.

The only documents in the record, however, do not support the contracting officer's position. The boiler selection justification, which apparently was prepared by the consulting engineer, is based on the assumption that the initial costs, performance efficiency and life expectancy of the two types of boilers are equal and that only the maintenance costs vary to the extent that the dry-back boiler allegedly costs \$486 more per year to maintain than a wet-back boiler.

Moreover, our review of the record does not show any support for the proposition that Cleaver Brooks dry-back boilers design is of any lesser quality than the wet-back type or that Cleaver Brooks has any particular price advantage. There is also no persuasive evidence in the record to support the agency's conclusion that life-cycle costs for the dry-back design are higher.

Thus, while we are not prepared to say that there are no differences between the two types of boilers, we must conclude in this case that the Air Force's exclusion of the dry-back boilers from the specification is not supported by the record. Consequently, we sustain the protest.

¹ Cleaver Brooks is the only manufacturer of dry-back boilers.

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The wet-back boilers have been installed and no practical remedy can be recommended at this time. We are, however, recommending in a letter today to the Secretary of the Air Force that steps be taken to avoid the recurrence of the procurement deficiency discussed in this decision.

A handwritten signature in black ink, reading "Milton J. Foster". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States