

DECISION

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

FILE: B-215593 **DATE:** January 17, 1985

MATTER OF: Eaton Leonard Corporation

DIGEST:

1. Protest that specification for tube bending machine is unduly restrictive is denied where agency determination of minimum needs and necessity of restricting competition was not shown to be unreasonable.
2. Protest issue concerning solicitation improprieties first raised in response to agency report is untimely under GAO Bid Protest Procedures and will not be considered.

Eaton Leonard Corporation protests that invitation for bids No. F33601-84-B-A039 issued by the 2750th Air Base Wing, Wright Patterson Air Force Base, for an automatic tube bending machine is unduly restrictive of competition. We deny the protest in part and dismiss it in part.

Eaton objects to two requirements of the specification stated in the IFB. First, the specification provides that heavy duty application "requires direct drive motors on the Y and B axis, no chains, bolts or clutches are acceptable." Second, the specification requires that the machine have a "pressure die interface zone recapture" capacity. This is essentially the application of a microprocessor program for control of the bending operation which automatically anticipates and compensates for interference between parts of the machine. The protester contends that both requirements overstate the actual minimum needs of the agency.

The determination of the government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting agency. The agency is most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. We will not question an agency's determination of its minimum needs unless there is a clear showing that

030988

the determination has no reasonable basis. Interstate Court Reporters, B-212564, Dec. 13, 1983, 83-2 C.P.D. ¶ 679. When, however, a protester challenges a specification as unduly restrictive of competition, it is incumbent upon the agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its actual needs. Once the agency establishes this support, the burden is on the protester to show that the requirements complained of are arbitrary or otherwise unreasonable. Amray, Inc., B-208308, Jan. 17, 1983, 83-1 C.P.D. ¶ 43.

The Air Force explains that it specified a direct drive motor without the use of chains, bolts or clutches because of the need to minimize maintenance and repair. The tube bending machine will be the only one available to an Air Force facility which designs, manufactures and tests certain modifications to aircraft. The Air Force believes that in order to meet deadlines for delivery of required parts, the tube bending machine must be operational as much time as possible. The agency states that, in its experience, the more moving parts such as chains, bolts and clutches in a machine, the more frequently maintenance and repairs are necessary.

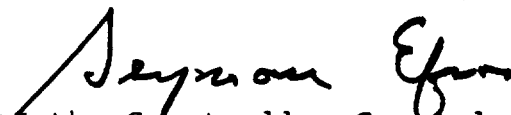
With regard to pressure die interface zone recapture, the Air Force desires to minimize the amount of scrap material generated by the tube bending process. It believes that the specified capability will enable the fabrication of multiple parts to exact requirements and enable rapid changes during tests and evaluations, thereby insuring accuracy and reducing labor and material costs. Eaton argues in its protest letter that pressure die interface zone recapture can only be accomplished by use of a patented "Tube Bender Pressure Die Interference Control." The Air Force describes the pressure die interface zone capture requirement as a capability or performance characteristic of tube bending machines. It contends that processes other than the patented one cited by Eaton can fulfill the specified capability.

In our view, the agency established prima facie support for the reasonableness of its specifications. The protester's only response to the Air Force's justification for not permitting chains, bolts and clutches in carriage design is to assert that its bending machines do not have a history of poor carriage performance and that over 250 Eaton machines have been supplied to military aircraft manufacturers. These statements alone are insufficient to establish the unreasonableness of the Air Force specification.

Eaton agrees with the Air Force that pressure die interface zone recapture capability will lower material costs through scrap reduction. The firm, however, states that its bending machines offer labor cost savings that outweigh the material cost savings available with machines having the specified capability. The firm also restates its belief that the specification unnecessarily requires use of a patented process, and that pressure die interface zone recapture capability is unnecessary, whether the patented process or an alternative is used. These unsupported allegations do not satisfy Eaton's burden of affirmatively establishing that the Air Force determination of needs is unreasonable. See Champion Road Machinery International Corporation et al., B-211587, et al., Dec. 13, 1983, 83-2 C.P.D. ¶ 674.

In its October 15, 1984, response to the Air Force report on the protest, Eaton alleged that the specifications were generally unclear and limited competition because they were insufficiently drafted in terms of the performance required by the Air Force. These general challenges to the procurement are untimely under our Bid Protests Procedures, 4 C.F.R. § 21.2(b)(1) (1984), since they concern alleged solicitation improprieties and were not filed prior to bid opening on June 21. Therefore, we will not consider these grounds of protest.

The protest is denied in part and dismissed in part.


for the Comptroller General
of the United States