

DECISION

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

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FILE: B-218206

DATE: April 11, 1985

MATTER OF: U.S. Polycon Corp.

DIGEST:

1. Agency's specification for steel conduit does not unduly restrict competition where agency offers explanation why restriction is necessary to meet its minimum needs and protester fails to show that agency position is clearly unreasonable.
2. Where agency's specification for steel conduit is reasonably related to agency's minimum needs, specification does not unduly restrict competition merely because it prevents bidder from offering nonmetallic conduit which is approved under applicable prequalification procedures.

U.S. Polycon Corp. protests any award under request for quotations (RFQ) No. FGOCA-8085-60015 for steam/condensate steel conduit lines, issued by Fairchild Air Force Base, Washington. Polycon contends that the RFQ unduly restricts competition to the extent that it requires that the conduit be constructed of steel and, therefore, precludes Polycon, a manufacturer of nonmetallic conduit, from competing. We deny the protest.

The procurement is for steam/condensate lines, part of an underground heat distribution system consisting of conduit lines which surround and protect the carrier pipes. The agency's specification called for the use of steel conduit only. The protester states that its non-metallic conduit, manufactured using fiberglass cloth and plastic resin, has been approved for installation on projects of this kind under the applicable Federal Agency Prequalification Procedure. See Philcon Corp., B-206641; B-206728; B-207421, Apr. 12, 1983, 83-1 CPD ¶ 380. The protester argues that, since its conduit has been found to

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meet the government's performance standards through the prequalification procedure, it was improper for the agency to use a specification requiring steel conduit which had the effect of excluding the protester from the competition.

The agency does not argue that the conduit manufactured by Polycon will not perform as required. Rather, the agency justifies its decision to limit the competition to steel conduit on the basis of factors other than the actual performance of the conduit, relating to the integration of the new conduit with the existing conduit system and potential difficulties with the installation and maintenance of nonmetallic conduit. Specifically, the agency states that because the existing conduit system is composed of steel conduit, it would be more difficult to integrate nonmetallic conduit into the system and would require expanding the agency's current inventory to include replacement and repair parts for nonmetallic conduit. In addition, the agency states that installation and maintenance of the conduit will be performed by in-house personnel who are trained in repairing the existing steel conduit, but lack any experience in working with nonmetallic conduit. According to the agency, the greater difficulty of repairing nonmetallic conduit under the adverse weather conditions expected at the site where it is to be installed would lead to higher costs for maintenance of the nonmetallic conduit.

A protester contending that a specification is unduly restrictive has a heavy burden of proof. The contracting agency has broad discretion in determining its minimum needs and the best methods of accommodating those needs. Potomac Industrial Trucks, Inc., B-204648, Jan. 27, 1982, 82-1 CPD ¶ 61. Where, as here, a protester challenges a specification as unduly restrictive of competition, the initial burden is on the contracting agency to establish prima facie support for its position that the restriction imposed was necessary to meet its minimum needs. Gerber Scientific Instrument Co., B-197265, Apr. 8, 1980, 80-1 CPD ¶ 263. In our review of the issues, we examine the reasonableness of the agency's determination of its minimum needs. Philadelphia Biologics Center, B-209660, June 1, 1983, 83-1 CPD ¶ 589. Once the agency establishes prima facie support for its restriction, the burden shifts 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.

The agency has established a prima facie case for restricting the procurement to steel conduit. In essence, the agency determined that the use of anything other than steel conduit would involve significant installation and maintenance problems and increased costs, since the agency personnel responsible for installing and maintaining the lines are not experienced with nonmetallic conduit, and the existing conduit system and inventory of parts consist of steel conduit.

Further, Polycon has failed to meet its burden of showing that the agency's determination was clearly unreasonable. Polycon focuses on what it asserts is the superior quality of its nonmetallic conduit compared with steel conduit. As noted above, however, the agency does not appear to disagree with the technical performance characteristics of Polycon's conduit; its decision to limit the procurement to steel conduit was based on other factors, detailed above, relating to installation and maintenance of the conduit. Polycon has offered no evidence to rebut the agency's reliance on those factors. In fact, Polycon concedes that the agency personnel are not trained to work with nonmetallic conduit.

Finally, with regard to the protester's assertion that its conduit should be deemed acceptable because it was approved under the applicable prequalification procedures, we have held that a specification in a solicitation for an underground heat distribution system is not improper merely because it may prevent an approved supplier from competing. Such a specification is proper where, as here, it is shown to reflect the agency's minimum needs. See PittCon Preinsulated Pipes Corp., B-209940.2, July 11, 1983, 83-2 CPD ¶ 70.

The protest is denied.

for Signature
Harry R. Van Cleve
General Counsel