

DECISION



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

Melody
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B-218026.2

FILE:

DATE: April 29, 1985

Sellers Engineering Company

MATTER OF:

DIGEST:

A protest that a boiler specification is unduly restrictive is denied where the contracting agency states that a prohibition on devices in the firetubes and a limitation on the heat transfer rate are necessary to avoid excessive maintenance and to prolong the life of the boiler, and the protester fails to establish that the restrictions are not reasonably related to the agency's minimum needs.

Sellers Engineering Company (Sellers) protests the award of any contract under request for proposals (RFP) No. N00604-85-R-0025, issued by the Department of the Navy for a mobile boiler room and associated equipment. Sellers contends that the boiler specification unjustifiably excludes its equipment from the competition and thus is unduly restrictive. We deny the protest.

Preliminarily, the Navy argues that Sellers' protest should be dismissed as untimely because Sellers failed to furnish a copy of its protest to the contracting officer within 1 day of filing with our Office as required under 4 C.F.R. § 21.2(a)(1) (1985). The Navy is correct that Sellers did fail to send the contracting officer a copy of its original January 16 protest letter and, as a result, we dismissed its protest by letter of January 30. The Navy ignores the fact, however, that Sellers then refiled its protest on February 21, prior to the February 22 closing date. As Sellers is challenging the specifications, this pre-closing-date protest is timely. See 4 C.F.R. § 21.2(a)(1).

At issue are two sections of the specification. Section 3.10.3 provides that "Spinners, turbulators and other such devices shall not be permitted in the firetubes" (the area of the boiler where fuel combustion occurs). The Navy explains that such devices, which remove heat, are prohibited because they have been found to cause an

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accelerated buildup of carbon residue, necessitating more difficult maintenance at shorter than otherwise normal intervals. Sellers' boiler is equipped with heat extractors which, Sellers apparently believes, are encompassed by the section 3.10.3 prohibition. Sellers claims that its heat extractors are not installed in a combustion zone and do not cause the buildup of carbon residue.

Section 3.9.4.3 of the specification provides (in conjunction with table 1 of the specification) that heat transfer rates shall not exceed 11,000 btu per square foot of total heating surface per hour. This limitation, the Navy explains, is intended to prevent the boiler from overheating or overworking and thereby reduce the chance of breakdown, failure, and a shortened boiler lifespan. Sellers' boiler apparently does not meet this limitation, and Sellers claims that, in fact, the limitation does not really address overheating and overworking--and thus is unnecessarily restrictive--since it is based on an average rate for the total surface area of the boiler, thereby failing to account for the fact that the rate actually is higher than 11,000 btu for certain areas of the heating surface of boilers. Sellers maintains that its boiler should be acceptable because it meets the requirements for limiting heat input to the furnace and primary heating surface, as well as the efficiency requirements.

Agency procurement officials are most familiar with the conditions under which equipment has been used in the past and will be used in the future and, thus, are in the best position to know the government's minimum needs. For this reason, it is our position that the determination of the government's needs and the means of best accommodating those needs are primarily the responsibility of the contracting agencies. Rack Engineering Co., B-208615, Mar. 10, 1983, 83-1 C.P.D. ¶ 242. Consistent with this general position, we will accord great weight to a procuring agency's technical conclusions concerning its minimum needs and will accept these conclusions as correct except where clearly shown by the protester to be incorrect. Industrial Acoustics Company, Inc., et al., B-194517, Feb. 19, 1980, 80-1 C.P.D. ¶ 139.

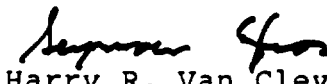
Although Sellers obviously disagrees with the Navy's determinations that devices such as its heat extractors lead

to carbon residue buildup and that limiting heat transfer rates based on total heating surface will reduce the chance of boiler overheating and overworking, Sellers has presented no technical literature or other documentation to support its position. Presumably, such literature on Sellers' own boiler would demonstrate to both the Navy and our Office whether its heat extractors, in fact, are installed in the firetubes or another combustion zone such that carbon residue buildup would be likely. Instead of technical documentation, Sellers has presented only its own self-serving statements to the effect that its boiler will meet the Navy's needs as to this maintenance-related requirement.

As for the heat transfer rate limitation, Sellers has not clearly established that a limitation based on an average rate over the total surface area of the boiler bears no relation to potential overheating and overworking. While it may be, as Sellers asserts, that certain areas of a boiler's surface will operate at a heat transfer rate in excess of the 11,000-btu limit, it seems at least reasonable that limiting the average rate will have some impact on the rates for the different areas on the boiler surface; a lower permissible average rate should lead to lower rates overall. Again, Sellers has not shown otherwise.

Due to the absence of substantiating evidence or persuasive argument, the protest boils down to no more than a technical disagreement, Sellers essentially arguing that we should rely on its technical expertise and judgment rather than the Navy's in deciding whether the specification reflects the Navy's actual needs. As explained above, we will defer to the agency's reasonable judgment, not the protester's, in technical disputes such as this.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel