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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Moore Heating & Plumbing, Inc.
File: B-246740
Date: April 1, 1992

Raymond Moore for the protester,
C. Dale Duvall, Department of Veterans Affairs, for the
agency.
John Formica, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest that specifications are overly restrictive because they require the replacement of a portion of an underground steam distribution system with a shallow concrete trench underground system to the exclusion of, or without permitting as an option, the use of a direct burial underground system, is denied where the agency demonstrated reasonable bases for this requirement based on the shallow concrete trench underground system's advantages in ease of maintenance and modification, and because it can also serve as a sidewalk.

DECISION

Moore Heating & Plumbing, Inc. protests as overly restrictive of competition the specifications in invitation for bids (IFB) No. 568-2-92, issued by the Department of Veterans Affairs (VA), for a project involving the rehabilitation and replacement of an underground steam distribution system.

We deny the protest.

The project contemplates the rehabilitation or replacement of approximately 4,215 linear feet of the underground steam distribution system at the VA Medical Center in Fort Meade, South Dakota. The protested specifications in the IFB are for the replacement of 880 linear feet of direct buried main distribution lines with lines enclosed in a shallow concrete trench (concrete trench system). Moore protests that the IFB is overly restrictive in prescribing the use of a shallow concrete trench underground distribution system to

the exclusion of, or without permitting as an option, the use of a direct burial heat distribution underground system.

Agencies are required to specify their needs in a manner designed to promote full and open competition and to include restrictive requirements only to the extent necessary to satisfy their minimum needs. Johnson Controls, Inc., B-243605, Aug. 1, 1991, 91-2 CPD ¶ 112. The contracting agency, which is most familiar with its needs and how best to fulfill them, must make the determination as to what its minimum needs are in the first instance, and we will not question that determination unless it has no reasonable basis. Id.

The agency reports that both a concrete trench system and a direct burial underground system, as proposed by the protester, were initially considered for the replacement portion of the project. The agency explains that the use of a concrete trench system was ultimately specified in the IFB because it offers significant advantages over the direct burial system in terms of ease of maintenance and modification, and because the pre-cast concrete trench covers also serve the facility as sidewalks. With regard to maintenance considerations, which the agency notes were given high priority due to inadequate maintenance staffing levels at its facility, the agency explains that the trench system by design is easier to maintain because all sections of the enclosed piping are accessible through the removal of the system's ground-level concrete trench covers, as opposed to the excavation needed to expose lines installed via the direct burial method. As to ease of modification, the agency explains that it is planning the expansion of its facility at Fort Meade and that a trench system will allow for easier and less costly modifications to accommodate the expansion because, again, the trench covers can be removed and changes to the system can be accomplished without the excavation required to modify a direct burial system. The agency also notes that it had a direct burial system installed in a portion of its facility in 1986, and has had problems with the system with regard to leak detection and venting.

The protester first challenges the agency's assertion that a direct burial system is more difficult to maintain because access to the piping can only be gained by excavation. The protester claims that "at least one direct burial system . . . obviates any need to gain access to the piping" in order to maintain the system. In support of this assertion, the protester provides a brochure describing a direct burial system "approved" for use by the VA.

However, the direct burial system to which the protester refers has been approved for use "in buildings" only, and has not been approved for use in projects such as this where the system is "outside of buildings." Also, from our review of the brochure provided by the protester, we note that the maintenance section specifies that repairs to the system found necessary during the performance of maintenance require direct access to the pipes, which requires excavation. Consequently, we find reasonable the agency's position that a concrete trench system is more desirable because of the relative ease with which the enclosed pipes can be accessed.

The protester next challenges the agency's position that the installation of a trench system will allow for easier and less costly modifications. The protester asserts that, contrary to the agency's characterization, the additional excavation required to modify a direct burial system would not be "excessive."

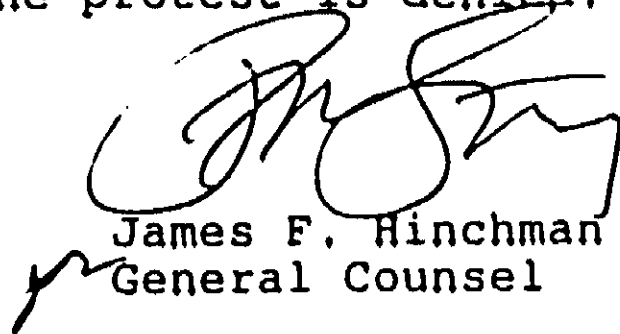
The protester's response here, which disputes only the amount of additional excavation required to modify a direct burial system, does not render unreasonable the agency's position that the modification of concrete trench systems is easier because it will not require the excavation necessary to modify a direct burial system. As to the costs of modifications, the protester states that it "cannot imagine a modification that would be less costly for a concrete trench than for a [direct burial system]." Since the protester has not submitted any data in support of this assertion, we have no basis on which to find unreasonable the agency's claim that it costs less to modify trench systems because access to such systems for modifications can be gained by simply removing the concrete covers, as opposed to the excavation necessary to access a direct burial system.

The protester next responds to the agency's position that a concrete trench system is more desirable because the ground-level concrete trench covers also serve the facility as sidewalks, by asserting that nothing precludes the agency from installing sidewalks at the facility if a direct burial system is installed. While this may be true, the protester has failed to consider or address the added costs of installing such sidewalks.

Finally, as to the problems with direct burial systems which the agency has encountered in the past, the protester states only that not all direct burial system designs are the same and that it could furnish a "problem-free design." Again, this bare assertion does not render unreasonable the agency's position based on its own experience with direct burial systems.

In sum, while the protester clearly disagrees with the agency's determination that a direct burial system will not meet its minimum needs, the protester has not shown that such determination was unreasonable or overly restrictive of competition.¹

The protest is denied.



James F. Hinchman
General Counsel

¹With regard to the level of competition, we note that the agency proceeded with bid opening, despite the filing of this protest, and received seven bids.