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

Decision

Matter of: Moore Heating & Plumbing, Inc.

File: B-247417

Date: June 2, 1992

Raymond Moore for the protester.
Joseph M. McDade, Jr., Esq., Department of the Air Force, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, 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 a steam heat distribution system with an above-ground shallow concrete trench system without permitting as an option the use of a direct buried underground system is sustained where the agency fails to show it has a reasonable basis for this requirement.

DECISION

Moore Heating & Plumbing, Inc. protests as overly restrictive of competition the specifications in invitation for bids (IFB) No. F33601-92-B-0008, issued by the Department of the Air Force for a project involving the replacement of a steam heat distribution system and the installation of a steam boiler.

We sustain the protest.

The project contemplates the replacement of approximately 10,000 linear feet of the direct underground heat distribution (UHD) system at Wright-Patterson Air Force Base. Moore protests that the IFB is overly restrictive in prescribing the use of a shallow concrete trench above-ground distribution system[1] without permitting as an option the

[1]A shallow trench system uses a buried concrete pipe which is large enough to hold the set of steam lines. The steam and condensate pipes with insulation are hung on stands off of the trench floor. All water that gets in the trench is drained to a sump or storm sewer.

use of a direct buried UHD system.[2] Moore argues that the agency should permit, as alternatives to the concrete trench system, any "problem free" direct buried systems that have been deemed acceptable.

The acceptability of UHD systems is determined according to the performance standards contained in the Federal Agency Prequalification Procedure. The Prequalification Procedure is administered by the Federal Agency UHD Systems Committee which is comprised of representatives of the Army, Navy, Air Force, and the Department of Veterans Affairs (VA). The committee issues a letter of acceptability to a supplier whose system satisfies the prequalification criteria which entitles that supplier to furnish its system on projects undertaken by the participating agencies. The Prequalification Procedure does not specify designs or materials to be used in the UHD systems; rather, it requires that systems be designed to resist water infiltration and damage, mechanical and structural damage, corrosion and other causes of deterioration. Once a system has been prequalified, the system's specifications are incorporated in the supplier's approved brochure. This brochure, in effect, becomes the UHD system design specification for any project on which the supplier is selected. See PhilCon Corp., B-206905, et al., Mar. 29, 1983, 83-1 CPD ¶ 319.

An agency is required to specify its needs and select its procurement approach in a manner designed to promote full and open competition. See LaBarge Prods., Inc., B-232201, Nov. 21, 1988, 88-2 CPD ¶ 510. A specification in a solicitation for UHD systems is not improper merely because it may prevent an approved supplier from competing. PittCon Preinsulated Pipes Corp., B-209940.2, July 11, 1983, 83-2 CPD ¶ 70. Nevertheless, restrictive provisions should only be included to the extent necessary to satisfy the agency's minimum needs. Southern Tech., Inc., B-239431, Aug. 31, 1990, 90-2 CPD ¶ 191; PhilCon Corp., B-206641 et al., Apr. 12, 1983, 83-1 CPD ¶ 380.

In a recent decision, Moore Heating & Plumbing, Inc., B-246740, Apr. 1, 1992, 92-1 CPD ¶ ___, we found that the VA's specification prescribing the use of a shallow concrete above-ground distribution system without permitting as an option the use of a direct buried UHD system was not overly restrictive. We found that the record supported the agency's decision based on three factors: (1) the ease of maintenance offered by a concrete trench system was necessary because of inadequate maintenance staffing at the

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[2]A direct buried piping system consists of steam and/or condensate line with insulation installed within another thinner pipe.

VA facility involved; (2) the concrete trench system is easier to modify, an important consideration in that case because of the agency's plans to expand the facility; and (3) the concrete trench covers may be used as sidewalks.

In this case, in contrast, the agency relies solely on the results of a life cycle cost analysis as justification for its decision to restrict competition. Since, as explained below, we find that the cost analysis does not support the agency's decision to exclude all types of direct buried systems, we conclude that the specification overstates the agency's minimum needs. See PittCon Preinsulated Pipes Corp., B-209157, June 28, 1983, 83-2 CPD ¶ 30.

The agency reports that, to determine which system(s) to require in the IFB, it conducted a life cycle cost analysis comparing the above-ground shallow trench system and one type of direct buried distribution already in use at Wright-Patterson. That system is designed using cathodically protected steel conduits to prevent water from reaching the inner pipe and insulation. The analysis showed that the above-ground shallow trench system had the lowest life cycle costs. The agency explains that this analysis was based primarily on the fact that the two previous direct buried systems had failed during their 25-year life expectancy periods; the need to repair or replace the pipe thus overcame the lower initial cost of installing the direct buried system. The agency attributes the problems experienced with the direct buried system to soil corrosiveness and the high water table during the winter season in the locations where it is installed.

The protester challenges the agency's exclusion of all direct buried systems on the basis that one type of direct buried system failed in the past. The protester points out that the Federal Agency UHD Systems Committee has indicated that direct buried systems have performed adequately in the past. The protester argues that while the underground systems used at Wright-Patterson failed before the end of their life expectancy periods, not all direct buried designs are the same. For example, while the direct buried system considered in the life cycle cost analysis is based on the use of cathodically protected steel conduit to prevent water infiltration and corrosion, the system offered by the protester relies on fiberglass encased materials. The protester asserts that since the agency compared only the cathodically steel protected design of direct buried pipe in use at Wright-Patterson to the above-ground concrete design, the agency has failed to justify its conclusion that other types of direct buried designs will not meet the agency's minimum needs.

To support its decision to exclude all direct buried systems, the Air Force cites Air Force Regulation 8-7 (1986), which in essence requires adherence to the procedures specified in Engineering Technical Letters (ETL) issued by the agency. The ETL applicable to heat distribution systems outside of buildings is ETL 88-6. According to the agency, once it conducted a life cycle cost analysis and concluded that the above-ground concrete trench design was preferable to the steel conduit design of direct buried system, it was required under the ETL to exclude the entire class of direct buried systems; it could not simply exclude the one design type on which the life cycle cost analysis was based.

Contrary to the agency's suggestion that the ETL requires the agency to treat all direct buried systems equally, ETL 88-6 merely requires that the selection of the type of system be based on a life cycle cost analysis; there is no language in the ETL that remotely suggests--as the agency argues--that the Air Force must exclude all direct buried systems from consideration based on the poor performance of a particular type of direct buried system. Accordingly, the agency cannot reasonably rely on its internal regulations as justification for its decision to exclude all types of direct buried systems based on a cost analysis which merely shows that one type does not meet its needs.

Nor can the agency reasonably rely on the two-paragraph technical statement prepared in response to the protest to support its decision to restrict competition. In that statement, the Air Force asserts that it has had one manufacturer's fiberglass direct buried system in place at Wright-Patterson since 1988, and that the long-term reliability of this system has not been established. There is no evidence in the record here that the agency evaluated the capabilities and the feasibility of using a fiberglass system; rather, the agency states--after the fact--that based on unspecified failures of this manufacturer's system at other installations, there are potential problems associated with the system that make it undesirable. The agency does not explain the nature and extent of these problems.

Moore, on the other hand, has submitted a letter--written in response to an earlier bid protest[3] which challenged another

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[3]In response to that protest, we held in Nova Group, Inc., B-245106, Dec. 17, 1991, 91-2 CPD ¶ 548, that the decision of the Federal Agency UHD Systems Committee to require the protester to pass a longer boiling test than the one required by the Prequalification Procedure was reasonable where the protester's fiberglass UHD system had twice previously failed and the other contractors' fiberglass UHD

another specification under this requirement--from the Federal Agency UHD Systems Committee that specifically states that the problems associated with the fiberglass systems cited by the agency cites have been isolated to one manufacturer; therefore, the failure of the fiberglass casing under one particular manufacturer's system is not indicative of failure under all fiberglass systems. In addition, Moore explains that a fiberglass encased system does not have the problems associated with the cathodically protected steel system because the fiberglass system can be installed at any depth including the level of the shallow concrete trench, and the fiberglass system is inherently corrosion free because it is made of fibrous glass and does not have or need the cathodic protection that the cathodic system needs. The agency has not rebutted the protester's contentions or otherwise supported its conclusion that all fiberglass direct buried systems should be presumed to be unacceptable based on unspecified potential problems with one manufacturer's design. Accordingly, the agency has failed to establish that the fiberglass system will not meet its needs. See PhilCon Corp., B-206641 et al., supra; PittCon Preinsulated Pipes Corp., B-209157, supra.

We find that the Air Force could not properly restrict the competition to above-ground trench systems and exclude all types of direct buried systems based on a life cycle cost analysis which considered only the cathodically protected steel conduit design, and on speculation that the fiberglass design type offered by the protester is unreliable. Accordingly, we recommend that the solicitation be amended to properly reflect the minimum needs the agency has described and exclude only the cathodically protected conduit design direct buried system considered in the life cycle cost analysis. We also find Moore to be entitled to its costs of pursuing the protest. 4 C.F.R. § 21.6(d) (1992).

The protest is sustained.

for Milton J. Socolar
Comptroller General
of the United States

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systems had not experienced similar failures.