

Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Ramco Equipment Corporation

File: B-254979

Date: February 2, 1994

Fred Randall for the protester.
Vera Meza, Esq., and Michael Lonsberry, Esq., U.S. Army Materiel Command, for the agency.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that requirement for cleaning chemical in solicitation for tank washer degreasing machine which requires that the chemical be capable of cleaning a number of different types of metals without discoloring the metals and without leaving a residue on the metals is impossible to meet is sustained where the agency does not rebut protester's evidence that no such chemical exists and the record otherwise suggests that the specifications overstate the agency's needs.

DECISION

Ramco Equipment Corporation protests that the requirement to provide a cleaning chemical in invitation for bids (IFB) No. DAAC79-93-B-0078, issued by the Department of the Army for an agitated tank washer degreasing machine, is restrictive of competition.

We sustain the protest.

The degreasing machines are used for removing dirt, grease, sludge, and other foreign materials from engine and vehicle parts and miscellaneous ordnance items made from various metals. The machines clean the parts by immersing and agitating them in recirculated, hot water or a water/detergent solution. As relevant to this protest, section 3.5 of the IFB purchase description provides: "[t]he machine shall strip 98 percent of all grease, oil, and common soils, inside and outside, from items in

30 minutes or less. This shall be accomplished without any precleaning or pretreatment. . . ." Section 3.7.3 provides:

"Machine manufacturer shall recommend a generic type chemical compound suited to the types of materials (aluminum, brass, copper, magnesium, steel) being washed and soils to be removed. The chemical shall not leave any residue or cause any discoloration of the materials being cleaned. Machine shall perform as specified when charged with 8 ounces (or less) by weight of recommended generic chemical compound per gallon of water in the reservoir. Contractor shall furnish initial chemical charge with the machine for start-up and sufficient chemical to operate the machine for 90 working days."

Ramco states that it is not aware of any generic chemical compound that will clean all of the potential soils from all the different metal compositions without leaving a residue or causing discoloration. Ramco explains that aluminum, brass, copper, and magnesium are sensitive metals that can be damaged by even mild detergents and that, in fact, brass and copper can be tarnished by the heat of the water. To support this position, Ramco has submitted letters from two chemical specialist companies. One states that it is impractical to assume that any one detergent could perform without first testing a sample of contaminated parts in the manufacturer's laboratory. The second states that it does not offer a generic-type, commercially-available, cleaning solution and does not believe one exists that will meet the requirements of the solicitation because a cleaning solution that must remove 98 percent of all the listed soils would have to be used at varying concentrations and varying temperatures depending on the composition of the soils. The second specialist also states that without the employment of a rinse cycle, all aqueous detergents will leave a residue on the parts consisting of detergent and emulsified and soluble soils.

The contracting agency has the responsibility for drafting proper specifications that reflect the government's needs. In developing those specifications, agencies are required to use "market research in a manner designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired." Federal Acquisition Regulation (FAR) § 10.002(a)(2). In addition, the specifications must reflect the minimum needs of the agency and the market available to satisfy those needs. FAR § 10.002(a)(4). Our Office will not substitute its judgment for the contracting agency's judgment of its needs unless there is clear and convincing evidence that the

specifications are impossible to meet or otherwise unduly restrict competition. California Inflatables Co., Inc., B-249348, Nov. 9, 1992, 92-2 CPD ¶ 331.

In the report it submitted in response to the protest, the Army did not respond to Ramco's argument that the specification for the chemical was impossible to meet. In additional comments requested by our Office, the Army stated that it recently used the same specification to procure a degreasing machine and received three responsive bids and that it awarded a contract under that specification. We then asked the Army if the chemical that is being supplied under that contract is meeting the specification, that is, if it is cleaning all the various metals, without discoloring any of the parts and without leaving a residue despite the fact that there is no rinse cycle. The Army responded that the awardee, Graymill Corporation, provided Aquatene GM330 cleaning solution concentrate and that the cleaning solution has lasted longer than required. As to whether the chemical is meeting the specifications, the Army simply replied that the machine is used to remove grease and oils "with subsequent cleaning of parts by other means if required."¹

Ramco argues that the Army's explanation does not indicate whether the chemical has cleaned aluminum, brass, copper, magnesium, and steel without leaving any residue on the metals and without discoloring them, as required by the solicitation. Ramco restates its position that the specification cannot be met and now specifically argues that the Aquatene chemical does not meet it.

As provided above, the specification in issue requires the machine manufacturer to provide a chemical that will clean aluminum, brass, copper, magnesium, and steel without causing any discoloration and without leaving a residue even though there is no rinse cycle. We have specifically asked the Army to address the protester's argument that no such chemical exists. The Army's only response to this question was to state that it awarded a contract using the same specification last year. When we then asked the Army if the chemical that is being provided by that contractor is meeting the requirements of the specification, the Army simply told us that the chemical is lasting longer than required under the solicitation. The Army, however, in spite of our request, has not addressed whether the chemical is cleaning all the various metals listed in the specification without discoloring them and without leaving a

¹The Army also stated two of the three bidders on that solicitation did not indicate what chemical they intended to supply if awarded the contract.

residue. Nor has the Army indicated that it has conducted any market research, as required by FAR § 10.002, to determine if the chemical it has specified is in fact available.

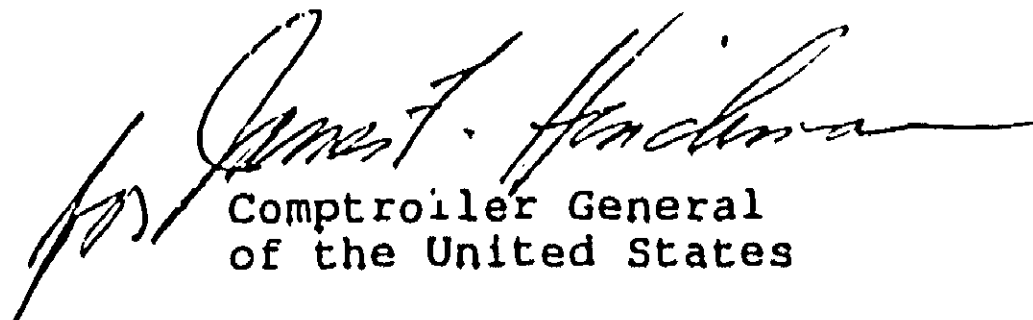
The protester, on the other hand, has provided information from two chemical specialists who assert, and explain why, a generic chemical does not exist that will in fact meet the performance requirements. Given that the record is entirely devoid of any information, such as market research, to contradict these statements that a chemical does not exist that will meet the requirements of the solicitation, it appears that the protester is correct that the specification cannot be met.

Moreover, it appears that the Army is tacitly acknowledging that what it is now using (the machine and chemical delivered under the previous contract) is not or may not be working as required by the RFP since the Army now states that the machine is used to remove grease and oils "with subsequent cleaning of parts by other means if required." The solicitation makes no provision for the possibility of cleaning the parts by other methods. Rather, both the current and earlier specification provide that the "machine shall strip 98 percent of all grease, oil and common soils, inside and outside, from items in 15 minutes or less. This shall be accomplished without any precleaning or pretreatment such as vapor degreasing, scraping, solvent soaking, etc., to loosen or remove the soils. . . ." Thus, it appears that the specification is in fact overstating the Army's minimum needs because the Army is willing to accept a machine and cleaning agent that do less than required by the specification. Since procuring agencies are only permitted to include requirements that meet their minimum needs, the solicitation is also defective for this reason. Pipeliners Sys., Inc., B-254481, Dec. 21, 1993, 93-2 CPD ¶ ____.

We recommend that the Army determine what its minimum needs are and provide specifications that reflect those needs only, amending the solicitation or issuing a new one as appropriate. In addition, we find that Ramco is entitled to reimbursement of its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f), Ramco's certified claim for such costs,

detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.



James T. Hendon
Comptroller General
of the United States