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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rubb Building Systems

File: B-254907.2

Date: February 28, 1994

Douglas W. Elston, Esq., Elston, Brown & Beaufait, for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that specifications for construction of buildings to store hazardous waste materials are unduly restrictive of competition is denied where the record shows that the requirements are necessary to meet the agency's minimum needs.

DECISION

Rubb Building Systems protests the terms of invitation for bids (IFB) No. DACW69-93-B-0034, issued by the Army Corps of Engineers for the construction of two temporary storage buildings to store hazardous wastes. The protester contends that various portions of the IFB unduly restrict competition.

We deny the protest.

The IFB was issued on July 23, 1993, and sought bids to provide the labor, materials, and equipment to construct two buildings to store contaminated soil at Winfield Locks and Dam, located on the Kanawha River in West Virginia. Each building is intended to be used to temporarily store soil contaminated by hazardous substances until a suitable remediation plan is established. The contaminated soil will then be removed and remediated, and the entire building will be decontaminated and removed.

The IFB initially provided that bids would be opened on September 1. However, by letter dated July 28, AET Corporation, a dealer or supplier claiming to represent Rubb, filed an agency-level protest contending that the IFB was overly restrictive because the solicitation:

(1) required the buildings' framework to be aluminum, (2) prohibited the use of fabricated trusses, (3) required that the fabric be integrally connected to the outer membrane, and (4) listed foreign companies as the supplier/manufacturer of the fabric skin. In an August 12 letter, the agency advised AET that its design staff had re-evaluated the project design in light of its protest and the solicitation would be amended to permit the use of aluminum truss-work provided the truss-work meets all other specification requirements, including the walkway space requirements and the vertical clearance restrictions for material placement. Beyond that, the agency reaffirmed that the solicitation reflected its actual minimum needs.

Rubb subsequently filed this protest with our Office on October 13,[1] prior to bid opening, alleging similar grounds of protest as that asserted by AET in its agency-level protest. Rubb contends that the IFB's requirement for aluminum structural framing is not necessary because galvanized steel will also meet the agency's needs. Rubb argues that galvanized steel is at least equal or superior to aluminum as material for use in the construction of buildings storing hazardous waste materials because of its superior strength, lower cost, and ability to protect against corrosion. Rubb also protests that the amendment which allows the use of aluminum trusses is restrictive because the dimensional criteria favor a particular manufacturer's design whereas most domestic manufacturers of this type product would have to modify their standard designs in order to meet the requirements; the required fabric attachment system will make fabric panel replacement difficult when the buildings are filled with the contaminated soil; and the warranty requirements are unrealistic.

In preparing a solicitation for supplies or services, a contracting agency must specify its minimum needs and solicit bids in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A) (1988), and to include restrictive requirements only to the extent necessary to satisfy its minimum needs. 10 U.S.C. § 2305(a)(1)(B); Barrier-Wear, B-240563, Nov. 23, 1990, 90-2 CPD ¶ 421. Where a protester alleges that a solicitation is unduly restrictive, we review the record to determine whether the requirement has been justified as necessary to satisfy the agency's minimum needs. See, e.g., Corbin Superior Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶ 389. Here, after reviewing the record, we conclude that the challenged requirements are reasonably related to the agency's minimum needs.

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[1]Three bids were opened that same date.

The Corps explains that although galvanized steel may provide a stronger structure than aluminum, that material is inadequate to meet the agency's specific needs here. The agency's research laboratory did not recommend the use of galvanized steel for the structural framing because that type material would not perform well in the anticipated environment in which it would be used. In this regard, the agency reports that storage of contaminated soil would create a harsh and corrosive environment within the storage buildings as a result of the high humidity and the chemicals in the soil. If galvanized steel were used for the structural framing, the agency states, any flaws in the galvanizing or damage as a result of shipping or installation could accelerate corrosion. Further, the presence of volatile organics in the soil could damage the organic sealer coats on the galvanized steel; chlorine based volatiles could lead to pitting the steel, corroding the galvanized coating and the steel substrata. Once the soil is stored in the buildings, the agency states, it becomes costly and difficult to maintain the structural framing--maintenance personnel would have to be trained, the required protective clothing would hamper the maintenance/repairs, and the space available inside the building would limit the equipment that could be used to perform any necessary maintenance/repairs. Thus, according to the agency, use of aluminum in the structural framing will minimize the need for maintenance/repairs.

The Corps denies that certain required features favor a particular manufacturer's design but were written to meet the agency's needs. For example, the agency has a need to maintain a walkway inside the building (which will serve as an exit) between the contaminated soil and the structural support. As to the fabric attachment system required, the agency states that the specified method of fabric attachment will facilitate the ease of shortening or extending the buildings which may become necessary since the final quantity of contaminated material to be stored is unknown. The agency also reports that since the length of time the buildings may be needed to store the soil will depend on the method of soil remediation selected which may take up to 25 years, the solicitation reasonably requires that the useful life for the structural framing should be warranted for a similar period of time.

The protester continues to challenge the reasons given by the Corps for excluding galvanized steel as a structural material for the buildings and has provided opinions from structural engineers and metallurgists to demonstrate the durability of galvanized steel in a highly corrosive environment. Rubb alleges that the Corps did not perform substantive analysis of the actual corrosion rate for galvanized steel nor review the relative merits of aluminum

versus galvanized steel. The protester has also detailed its continuing objections to the required method of fabric attachment and warranty requirements.

The determination of the agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion and, therefore, we will not question such a determination unless the record clearly shows that it was without a reasonable basis. See Corbin Superior Composites, Inc., supra. The Corps determined for this particular corrosive environment that an aluminum structure would be more reliable and effective and require less maintenance. This decision was based on its assumptions concerning the volatile chemicals in the soil and their potential effect on the galvanized steel. The protester clearly disagrees with the agency's determination to exclude galvanized steel material based on its own assumptions concerning the particular environment's effect on galvanized steel and aluminum. We do not agree with Rubb, however, that the Corps was required to provide evidence of a substantive analysis of actual corrosion rate for galvanized steel and the relative merits of galvanized steel versus aluminum before determining that aluminum is the material which will best accommodate its needs. We think the Corps's technical and research staff had reasonable concerns about the effectiveness and reliability of galvanized steel in this environment; the differing opinions expressed by the protester's own experts which explain the advantages of galvanized steel do not disprove the Corps's technical determination that aluminum is the optimal material for the framing in this situation. In short, we think the Corps reasonably could rely on its own technical expertise in specifying aluminum for the structure.[2]

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[2]The protester also objects to the requirements that the contractor warrant the framing material for 25 years and the building cover for 15 years. The protester states that none of the manufacturers of these materials will agree to this warranty. The agency states that the buildings most likely will be needed for 15 to 25 years which is the length of time needed to accomplish the remediation. (The cover can be replaced without difficulty after 15 years.) It also is undisputed that maintenance within these buildings will be difficult. Thus, we have no basis to question the agency's need to have problem-free buildings for these periods of time and for the warranties for these periods of time.

The protest is denied.

Ronald Berger

FOR

Robert P. Murphy
Acting General Counsel