



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** D & R Tank Co., Inc.

**File:** B-258529

**Date:** January 26, 1995

Ross L. Crown, Esq., Civerolo, Wolf, Gralow & Hill, for the protester.  
Terrence J. Tychan, Department of Health and Human Services, for the agency.  
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest that solicitation unduly restricts competition by specifying the use of a glass lining in water storage tanks being procured is denied where the agency had a reasonable basis for placing a priority on low maintenance and for concluding that glass-lined tanks would result in lower maintenance costs.

## DECISION

D & R Tank Co., Inc. protests the terms of invitation for bids (IFB) No. IFB-94-56-MAG, issued by the Indian Health Service (IHS), Public Health Service, Department of Health and Human Services, for construction of a glass-lined bolted steel water storage tank on the San Ildefonso Indian reservation in New Mexico. D & R contends that the agency has no basis for requiring a glass lining for the tank.

We deny the protest.

The agency issued the solicitation on August 15, 1994, for a firm, fixed-price contract for construction of the water storage tank, with foundation, piping, and all necessary appurtenances, in accordance with drawings and specifications provided with the solicitation. The tank is part of a project to provide safe water and sewer to 28 homes being constructed in the Black Mesa area of San Ildefonso Pueblo.

The agency amended the solicitation one time, to incorporate the results of a geotechnical investigation report and to extend the date of bid opening from September 13 to the

afternoon of September 20. Early on that date, shortly before the scheduled bid opening, D & R filed this protest with our Office, challenging the agency's requirement that the tank be glass-lined.

The protester argues that the requirement for glass lining is unduly restrictive of competition. D & R asserts that glass- and epoxy-lined tanks are equally capable of storing large quantities of water and argues that the epoxy-lined tank will last longer because, unlike a glass-lined tank, the lining can be repaired and reapplied in the field.

Agencies are required to specify their needs in a manner designed to promote full and open competition, and may only include restrictive provisions in a solicitation to the extent that they are necessary to meet the agency's minimum needs. Pipeline Sys., Inc., 73 Comp. Gen. 61 (1993), 93-2 CPD ¶ 343. Where a protester alleges that a requirement is unduly restrictive, we will review the record to determine whether the requirement has been justified as necessary to satisfy the agency's minimum needs. Sunbelt Indus., Inc., B-246850, Mar. 31, 1992, 92-1 CPD ¶ 325. Here, the record as a whole supports the agency's determination to require a glass lining.

The agency asserts that the Indian tribe has limited resources for maintenance and that the goal of minimizing maintenance costs for the tribe was a key consideration in developing the requirement. Even if the protester were correct that the epoxy-based tank would last longer, the IHS project engineer states, the tribe would have to repaint it one or more times during its useful life; by contrast, the glass lining, even if it does not last as long, will be essentially maintenance-free. The project officer also notes that the costs of repainting similar tanks (tanks with lead-based primer) has more than tripled, creating a concern that costs to repaint epoxy-based tanks might similarly increase.

In responding to the agency report, the protester denies that glass-lined tanks have any maintenance advantage and asserts that the epoxy-lined tanks have a lower life cycle cost. Glass-lined tanks, the protester argues, are more apt to break down due to punctures, indentations, and surface damage resulting from rocks and bullets, as well as freezing and thawing of the water inside the tank, and are more costly to repair when such damage occurs.

In its initial protest, D & R essentially conceded that a glass-lined tank will last longer without maintenance than an epoxy-lined tank. Specifically, D & R conditioned its contention that the epoxy-lined tank would last longer--55 years--upon the tank's being repainted after 25 years, while the glass-lined tank would last longer--36 years--without painting.<sup>1</sup> Thus, it is undisputed that epoxy-lined tanks require more routine maintenance than glass-lined tanks.

With regard to maintenance due to surface damage, such as punctures from rocks and bullets, the agency points out that both types of tanks are susceptible to such damage. Similarly, the effects of thawing and freezing, while of more concern, have simply not caused any serious problems in the past. Moreover, even assuming, as the protester contends, that glass-lined tanks are more susceptible to such damage and are more costly to repair when such damage occurs, the project engineer cites various characteristics of epoxy-lined tanks that could result in maintenance costs that would not be incurred with glass-lined tanks, specifically, pinholes in the coating, lack of paint coverage behind rafters and ladders, uneven coating coverage, and lack of adherence of the coating to the welds.

The protester argues that the personal observations and experience of the agency project engineer are not a convincing basis for limiting competition to glass-lined tanks. We see no basis to object to the agency's reliance on the project engineer's observation and experience, particularly since the protester's rebuttal to his findings consists of general statements by protester's counsel regarding the technical properties of the two types of tanks.<sup>2</sup>

In sum, even viewing the evidence in the light most favorable to the protester's position, the record shows that glass- and epoxy-lined tanks both may require unscheduled

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<sup>1</sup>We recognize that in responding to the agency report, the protester denies that glass-lined tanks have any maintenance advantage. In its initial protest, however, D & R specifically stated: "In fact, D & R has calculated the total life expectancy for a typical glass tank to be approximately 36 years, while a typical epoxy tank will last approximately 55 years if the lining is repainted after 25 years."

<sup>2</sup>With one exception--a general reference to the opinion of one of D & R's engineers--the protester does not indicate the source for its counsel's assertions on these technical points.

maintenance. Nevertheless, at a minimum the agency's decision to specify glass-lined tanks is supported by the difference in routine maintenance, i.e., the undisputed fact that epoxy-lined tanks must be repainted one or more times during their useful life, while glass-lined tanks require no such maintenance. Accordingly, since the record shows that the agency had a reasonable basis for concluding that glass-lined tanks would result in lower maintenance costs, and for placing a priority on low maintenance, we see no basis to conclude that the requirement for glass-lined tanks exceeds the agency's needs.

The protest is denied.

  
for Robert P. Murphy  
General Counsel