



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Clarke Industries, Inc.

File: B-261693

Date: October 18, 1995

Kenneth R. Wening for the protester.

Sam W. Magruder, Jr., for Tennant, an interested party.

Janet N. Repka, Esq., and John S. Albanese, Esq., Department of Defense, for the agency.

Jeanne W. Isrin, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that specification requirement for a retractable side scrubbing brush for rider power floor scrubbers is unduly restrictive of competition is denied where the contracting agency reasonably determined that retractable brush could reduce the likelihood and extent of damage to scrubbing head and corridor walls.

DECISION

Clarke Industries, Inc. protests the issuance of a purchase order to The Tennant Company under request for quotations (RFQ) No. MDA946-95-T-3607, issued by the Real Estate and Facilities Directorate, Department of Defense, for four rider power floor scrubbers, Tennant model 510E, to be used to maintain hallway floors in the Pentagon. Clarke protests that a specification requirement for a retractable side scrubbing brush is unduly restrictive of competition.

We deny the protest.

The agency reports that in 1994, officials of the Pentagon Building Manager's Office (PBMO) arranged for demonstrations of rider scrubbers manufactured by Tennant and Clarke so as to familiarize themselves with the rider scrubbers commonly available.¹ Based on the demonstrations, PBMO officials determined that a side

¹Although there appears to be no disagreement that the Tennant model 510E rider scrubber was one of the models demonstrated, PBMO and Clarke disagree as to whether the Clarke model 6200 also was demonstrated. PBMO reports that the model 6200 was demonstrated; Clarke claims that it instead demonstrated its

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scrubbing brush that would retract automatically when obstacles were encountered would be necessary in order to meet the agency's minimum needs based on their finding that a retractable brush could prevent damage to the machine's scrubbing head and the corridor walls and would reduce the number of personnel required to perform the cleaning function. Since it appeared that only Tennant's model 510E scrubber offered a retractable side scrubbing brush, contracting officials issued RFQ No. MDA946-95-T-1589 for the Tennant model 510E; the RFQ listed the salient characteristics of the Tennant scrubber considered essential, but failed to include a requirement for a retractable side scrubbing brush. Three firms offering the Tennant model 510E on the Federal Supply Schedule (FSS) were solicited. One firm failed to submit a quote; the quote of another firm was deemed unreasonably high; only Tennant among the three FSS contract holders submitted a reasonably priced quote. In addition, Clarke quoted its model 6200 rider scrubber as the equal of Tennant's model 510E. Upon becoming aware that the requirement for a retractable side scrubbing brush had been omitted from the salient characteristics listed in the RFQ, PBMO canceled the RFQ since the brush was deemed necessary to meet the agency's minimum requirements. The purchase description was revised to include the retractable side scrubbing brush among the required features. When consulted by the agency, Clarke's representative confirmed that the side scrubbing brush it offered on its rider scrubbers was on a permanent mount and was not retractable. Having determined that only the Tennant model 510E scrubber would meet the government's minimum needs, and that only Tennant was likely to submit a reasonably priced quote for the model 510E, PBMO issued RFQ No. MDA946-95-T-3607, which contained the revised requirements, only to Tennant. Upon learning of the new RFQ and the subsequent issuance of a purchase order to Tennant, Clarke filed this protest with our Office.

Clarke argues that the requirement for a retractable side scrubbing brush, which it concedes it cannot meet, is unduly restrictive of competition and that therefore issuance of the purchase order to Tennant under the unduly restrictive RFQ was improper. According to the protester, its model 6200 rider scrubber is essentially the equal or better of the Tennant model 510E in function and performance. Specifically, Clarke argues that the model 6200's fixed side scrubbing brush performs the same function as the retractable side scrubbing brush, which is to allow the operator to scrub within two inches of the wall.

¹(...continued)

model 6700. Irrespective of the specific Clarke model demonstrated, however, the fact remains that Clarke was unable to supply a rider scrubber with a retractable side scrubbing brush and therefore was not in a position to meet the requirements of the RFP.

The governing statutes and regulations allow contracting agencies broad discretion in determining their minimum needs and the appropriate method for accommodating them. See 10 U.S.C. § 2305(a)(1) (1994); Federal Acquisition Regulation §§ 6.101(b) and 7.103(b). However, because full and open competition is generally required, agencies may include provisions restricting competition in solicitations only to the extent necessary to satisfy the legitimate needs of the agency. 10 U.S.C. § 2305(a)(1)(B)(ii); see National Customer Eng'g, 72 Comp. Gen. 132 (1993), 93-1 CPD ¶ 225. Where a protester challenges a solicitation's provisions as unduly restrictive of competition, our Office will review the record to determine whether the provisions are reasonably related to the agency's legitimate minimum needs. QualMed, Inc., B-254397.13; B-257184, July 20, 1994, 94-2 CPD ¶ 33; Tek Contracting, Inc., B-245454, Jan. 6, 1992, 92-1 CPD ¶ 28.

We have recognized that government procurement officials, who are familiar with the conditions under which supplies, equipment, or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the government's actual needs, and therefore, are best able to draft appropriate specifications. Gel Sys., Inc., B-234283, May 8, 1989, 89-1 CPD ¶ 433. We therefore will not question an agency's determination of its needs so long as it has a reasonable basis. Herley Indus., Inc., B-246326, Feb. 28, 1992, 92-1 CPD ¶ 243. Based on our review of the record, we find that the agency reasonably determined that a retractable side scrubbing brush is necessary to satisfy the legitimate need of the agency for the efficient cleaning of the Pentagon corridors.

Again, PBMO reports that it was evident from the 1994 demonstrations of rider scrubbers that the retractable side scrubbing brush on Tennant's model 510E would reduce or eliminate accidental damage to the machine and building corridors. The record indicates that the Tennant retractable brush slides out from the scrubber to clean along walls and racks. It can be retracted manually by the operator when he needs to avoid obstacles in the machine's path such as displays, flags, or columns, but will also retract automatically upon contact with a wall or stationary object. Further, according to the agency, if the retractable brush should accidentally strike the wall, the brush hits the baseboard rather than the wall before automatically retracting, thus causing no damage to the wall. In addition, PBMO officials expect that the fact that the brush retracts upon striking the wall will reduce the likelihood of damage to the equipment, in particular, to the scrub brush.² (In contrast, the Clarke model 6200 side scrubbing brush is mounted in a fixed position in a hard case housing about 12 inches high; it cannot be manually retracted by the operator and does not retract automatically upon impact.)

²In this regard, we note that the prices for replacement scrubbing brushes on Clarke's FSS schedule contract range from \$147 to \$407 each.

Clarke asserts that more than 35 pounds of pressure is required before the Tennant retractable side scrub brush will automatically retract; given the alleged amount of pressure required to trigger retraction, Clarke questions whether damage to walls can be avoided. Clarke's position, however, does not appear to take into account the fact that the Tennant retractable brush hits the baseboard rather than the wall before automatically retracting, thus presumably minimizing or avoiding damage to the wall. Further, although it is possible that some damage would result in the event of the brush striking an object, it does not appear unreasonable to expect that a retractable brush would cause less damage than a fixed brush (such as offered by Clarke). Moreover, it also does not appear unreasonable to expect that a retractable brush would suffer less damage than a fixed brush in the event of the brush striking an object. Indeed, Clarke itself notes that one purpose of having a retractable brush is "to protect the scrub head from being damaged."

We therefore conclude that Clarke has failed to show that PBMO unreasonably determined, based on the 1994 demonstration, that a retractable side scrub brush would reduce the likelihood of damage to corridor walls and the rider scrubber. Since, in our view, this justification by itself furnishes a reasonable basis for requiring a retractable brush, we need not consider Clarke's challenge to PBMO's determination that a retractable brush would also reduce the size of the required floor maintenance crew.

The protest is denied.

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