



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-178508

October 23, 1973

The Honorable Donald E. Johnson
Administrator, Veterans Administration

Dear Mr. Johnson:

By report 134-C, dated May 25, 1973, your Director, Supply Service, Department of Medicine and Surgery, reported on the protest of Charles J. Dispenza & Associates (Dispenza) against the determination that its bid was nonresponsive to invitation for bids (IFB) M2-60-73, issued by the Veterans Administration (VA) for the VA Hospital at San Antonio, Texas. The IFB, issued March 21, 1973, called for several items of laundry equipment, including a size 2 flatwork ironer (item 4) in accordance with VA specification X-1421 dated January 30, 1970, as amended January 19, 1973, and a spreader feeder (item 5). Item 5 was subsequently deleted from the IFB, since VA decided to procure the item from American Laundry Machinery on a sole-source basis.

Dispenza's low bid on item 4 offered a Titan steam roller ironer. However, section 3.7.1.3 of VA specification X-1421 required the use of a steam chest with the ironer to the exclusion of the steam-roller type ironer bid by Dispenza. Amendment 4, dated January 19, 1973, to the VA specification added new paragraph 1.2 which imposed a requirement that a size 2 ironer produce a minimum of 900 sheets per hour. Accordingly, Dispenza's bid on the Titan roller ironer was determined to be nonresponsive because the type of ironer offered did not meet the design requirement for a steam chest. Since it was determined that there was an urgent need for the ironer, award for item 4 was made to American Laundry Machinery on June 25, 1973.

While it was unnecessary to consider the merits of the contention in that case, the matter of the alleged restrictiveness of the VA specification was raised initially by Dispenza in B-178341, July 9, 1973. The file contains a letter dated April 3, 1973, from the Chief, Marketing Division for Medical Equipment, to Dispenza, recognizing that the requirement for a steam chest restricted competition to only two manufacturers. The letter further stated that:

"* * * our Special Requirements Section, Supply Service Veterans Administration Central Office, and Building Management Service Veterans Administration Central Office have determined that a chest type ironer is the only type that will perform the necessary ironing of sheets * * *."

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In his report of August 8, 1973, the Deputy Director, Supply Service, stated the reason for the imposition of the design criteria, in view of the stated performance requirements:

"* * * For some years now the program in VA and Department of Defense have determined that the chest type ironers were more conducive to furnishing constant quality linens through wrinkle-free operation. The performance requirement was initiated so that the dimensional differences of the rollers used by the two manufacturers (19" versus 26") would not interfere with competitive bidding."

41 U.S.C. 253 requires that full and free competition be obtained for the procurement of property and services necessary to the Government's needs. We have interpreted this statute as imposing an affirmative obligation on the procuring agency to utilize specifications which will allow the broadest field of competition to fulfill the legitimate needs of the Government. 45 Comp. Gen. 365, 368 (1965); 32 id. 384, 387 (1953).

It is not disputed that the design requirement for a steam chest restricts competition for this ironer to only two manufacturers. Nor is there any evidence of record that the steam-roller type ironer cannot meet the 900-sheet-per-hour requirement. VA states that Dispenza could have offered either of the two ironers which utilizes the steam chest. However, we view as restrictive any specification which requires the use of a particular manufacturer's regularly produced product or major component even though other manufacturers may be authorized to duplicate that product, unless it has been determined that no other product or component can meet the requirement equally as well. 39 Comp. Gen. 101 (1959). In fact, B-178341, supra, contains information that VA may be in the process of evaluating the steam-roller ironer offered by Dispenza.

In view of the above, we do not believe that the administrative preference for the chest-type ironer being "more conducive to furnishing constant quality linens through wrinkle-free operation" presents a valid justification for restriction on competition. Government specifications should state its minimum needs, consistent with the nature of the item or services being procured. The record is absent any further justification for the imposition of the steam chest requirement. In view of the fact that VA specification X-1421 contains a performance requirement, we believe that the steam chest requirement may unduly restrict competition. We therefore recommend that this requirement be reviewed in the light of the foregoing to provide a competitive opportunity to those firms which might be able to meet the 900-sheet-per-hour requirement using a method other than the steam chest, while maintaining quality standards.

In this vein, section 6.4 of VA specification X-1421 provides:

"Invitation for bids should specify that no item of equipment will be acceptable unless the manufacturer has had equipment of approximately the same type and design as that specified operating successfully in a commercial or institutional laundry or laundries for at least one year. Equipment installed for test purposes in a manufacturer's plant or laboratory shall not come within the category of successful commercial operation."

We note that amendment No. 1 to IPB 142-60-73 included this provision. We believe that such a provision provides VA with ample opportunity to assure itself that any offered commercial-type iron will meet its requirements. In this regard, the VA report of August 8, 1973, stated "This requirement [amendment No. 1] was considered necessary to insure that the machine performs to the production capabilities of the Agency."

Dispensa also protested the deletion of item 5, spreader feeder. Dispensa contends that the McCabe spreader feeder it offered in its bid could satisfy VA's requirements.

VA reports that the award to American Laundry was necessitated by space limitations at the San Antonio VA Hospital. It was stated that:

"* * * the spreader feeder, Size 2, Item 5A of Federal Specification OO-I-675a, is sole source. Because of the limited amount of space at the new San Antonio VA Hospital, only the Size 2 spreader feeder would be acceptable. The laundry is to be located in the basement of the hospital building. American Laundry true-feed spreader is 84" long while the McCabe spreader feeder was approximately 178" long. According to an RMI publication, the new McCabe spreader feeder is 136" long which is still too long to fit into the limited space available."

The RMI publication referred to is a copy of a November 1972 article in the "Rental Laundry Management" (RMI) publication which Dispensa submitted with its bid.

There is no requirement that the Government purchase equipment which does not, in the considered opinion of the purchasing agency, reasonably meet its needs. It is our position that where the legitimate needs of the Government can only be satisfied from a single source, the law does not require that they be compromised to obtain competition. B-172903, July 6, 1971.

Lastly, Dispenza alleges that the chest-type ironers offered by American Laundry and Ametek cannot meet the specifications. The same allegation is made for the American Laundry true-feed spreader. We believe our response to a similar contention in the last paragraph of B-178341, supra, has equal application here:

"You also question whether the equipment offered by Ametek will meet VA's performance requirement of 900 sheets per hour under the conditions listed in the IFB. When a bidder submits its bid without exception to the specifications it assumes, upon award, the obligation to perform in accordance therewith. In any event, this is a matter relating to contract administration which is a responsibility of the procurement activity."

Inasmuch as award has been made on both of the protested items, no corrective action is possible on this procurement. However, please advise us of any action taken on our recommendation.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States