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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stewart & Stevenson Services, Inc.; Cooper Industries

File: B-236187.2; B-236187.3

Date: November 29, 1989

DIGEST

1. Protest alleging that solicitation for diesel engine generators unduly restricts competition by specifying certain engine brake mean effective pressure and speed is denied where protester fails to show that agency's technical judgment regarding engine pressure and speed is unreasonable and at least three firms, including protester, manufacture engines that comply with specifications.

2. Experience requirements in solicitation that must be met by prior performance of engines under similar conditions which will be encountered during contract performance (ambient temperature/altitude and fuel) are not overly restrictive where agency is attempting to assure itself of reliability of diesel engines for continuous use.

3. Protest that specification, as amended, favors European manufacturers over American firms is denied where agency relaxed specification to obtain greater competition and solicitation contains Buy American Act and Balance of Payment clauses for use in evaluating foreign offers.

4. General Accounting Office does not agree with protest contention that solicitation should contain evaluation factor for oil consumption and maintenance costs where agency evaluation follows procurement guidelines in National Academy of Science technical report on diesel engines and oil consumption and maintenance costs were considered by agency in setting engine speed and size requirements.

DECISION

Stewart & Stevenson Services, Inc., and Cooper Industries, protest the specifications contained in request for proposals (RFP) No. N62864-85-R-0059, issued by the Pacific Division of the Naval Facilities Engineering Command. The

solicitation is for six diesel engine generators rated at 6,000 to 6,600 KW of power for the Navy Public Works Center, Subic Bay, Philippines.

Stewart contends the specifications are unduly restrictive of competition while Cooper argues that a solicitation amendment relaxed the specifications in such a manner that European manufacturers are favored.

We deny both protests.

The solicitation originally required a brake mean effective pressure (pressure)1/ of a maximum of 225 pounds per square inch (psi) and a maximum engine speed of 514 rpm. Amendment 0006 issued after Stewart's initial protest was filed raised the pressure to 260 psi but did not change the engine speed requirement.

Stewart initially contended that, based on the original requirement of 225 psi pressure and engine speed of 514 rpm, only Cooper can offer a 6,000 to 6,600 KW range diesel engine which has the proper rating. According to the protester, other manufacturers must offer more powerful or larger engines which operate at less than their designed capacity. Stewart argued that the specifications were outdated and did not take into account the technological advances of the last 10 years. Now Stewart argues that the issuance of amendment 0006 shows that the Navy recognized the restrictiveness of the original specification, but still did not raise the pressure high enough to allow Stewart to offer its most price competitive model. Stewart states that in response to the 225 psi pressure requirement, it would have offered its 18 cylinder engine, whereas now it can propose its 16 cylinder model. However, its most competitive engine for this application is its 12 cylinder model with a 275 psi pressure rating and 600 rpm engine speed. The protester wants the solicitation's pressure and speed rating increased so that its 12 cylinder model is acceptable.

The Navy states that the specifications were based on a National Academy of Sciences publication, Federal Construction Council Technical Report No. 69, "Stationary Diesel Engines for Use with Generators to Supply Electric Power," (1977) and the 1979-1980 update of the report. This update recommended 514 rpm engine speed and 225 psi pressure.

1/ This is a derived value indicating the average pressure in a cylinder during the power stroke needed to produce a given engine horsepower.

However, the Navy, recognizing that manufacturers have developed better materials since the report was written, increased the allowable pressure to 260 psi to permit more competition for what will still be a reliable engine that meets its needs. The Navy admits that its requirements and views on diesel engines are essentially conservative but maintains that in its judgment any further increase in pressure will add to the engine's thermal and mechanical stress which may well result in more frequent engine failure. The Navy states further that the 514 rpm engine speed was not increased because the increased engine speed would require more frequent overhauls and increase fuel consumption.

When a protester argues that specifications unduly restrict competition, the agency must present prima facie support for its position that the specifications are necessary to meet its actual minimum needs. Chi Corp., B-224019, Dec. 3, 1986, 86-2 CPD ¶ 634. This requirement reflects the agency's obligation to formulate specifications that permit full and open competition. Id. Once the agency establishes support for the challenged specifications, however, the protester must show that the specifications clearly do not represent the government's minimum needs. This requirement reflects our view that the determination of the government's minimum needs, the best method of accommodating them, and the technical judgments upon which those determinations are based are primarily the responsibilities of the contracting officials who are most familiar with the conditions under which the supplies or services are to be used. Boliden Metech, Inc., B-229861 et al., May 9, 1988, 88-1 CPD ¶ 446. Where, as here, technically complex supplies are involved the contracting agency's technical judgments are entitled to great weight; we will not substitute our judgment for the contracting agency's unless its conclusions are shown to be unreasonable. Id.

The agency's requirement here is for a primary source of power from generators that will operate continuously. Therefore, it appears to us that reliability and freedom from frequent repairs and overhauls are indeed critical. While Stewart argues that its engines can and have operated at higher rpms and pressure than allowed here without frequent breakdowns, we believe there is a reasonable basis for the Navy's technical conclusion regarding the increased risk inherent in high pressure and engine speed. While it is evident that the protester believes that its higher pressure and higher speed engines will meet the agency's needs, it has not made the required clear showing that the agency's conservative approach to the problem of providing a

reliable and effective power source for its Public Works Center has no reasonable basis.

The RFP also required from the offeror certificates of satisfactory experience for not less than three engines of the same model offered installed at two separate locations, operating on diesel fuel and at the required 260 psi pressure and 514 rpm speed. Stewart argues that it should be allowed to satisfy the solicitation's experience requirements by adjusting the ratings of its engine for altitude and/or ambient temperature which differ from those at Subic Bay. The Navy responds by stating that it wants to assure itself of the soundness of the offered engine through experience under field conditions that are similar to those that will be encountered at Subic Bay. According to the agency, allowing for these differing conditions will not provide the required information. Likewise, regarding Stewart's argument that it should be allowed to meet the experience requirements by showing the required experience using a lesser grade of fuel than will be required under the contract, the Navy states that it wants to see that the engine has operated properly using the same fuel which will be used at Subic Bay.

We find that the agency's requirements here are reasonable. We fail to see the purpose of requiring experience data that does not reflect the actual conditions under which the engine will be used.

Finally, Stewart objects to the solicitation provision that states that the required experience information must encompass the performance of engines at two different installations. The Navy reports that it wants the experience data from two installations to eliminate any disparity in maintenance which could affect engine performance so that any offeror cannot just use data from an exceptionally well maintained installation. Again, we find this to be a reasonable requirement.

Cooper's protest takes the opposite tact from that taken by Stewart in its main protest ground. When Stewart filed its original protest, Cooper submitted comments stating that it did not find the specifications, as originally issued, to be restrictive and supported the Navy's position. Following the issuance of amendment 0006, Cooper filed its own protest, contending the amended specifications now favored European marine engine designs, that it was entitled to a fair evaluation against foreign competition and that the cost of oil consumption and maintenance for the higher pressure engine should be evaluated under the solicitation.

The Navy, as noted above, amended the pressure requirement to permit greater competition. The major thrust of Cooper's protest is against the expansion of the scope of competition to include European made engines. We will not consider a protest based on such a premise since Cooper is, in effect, arguing that the agency's statement of its needs is not sufficiently restrictive. Our role in resolving protests is to ensure that the statutory requirement for full and open competition in the award of government contracts is met. Vacco Indus., B-230036, Apr. 21, 1988, 88-1 CPD ¶ 393. In any event, Cooper has not shown that the Navy's decision to increase the pressure requirement was unreasonable from a technical standpoint. In fact, most of Cooper's arguments seem to concern the protester's view that its competitive position vis-a-vis other engine manufacturers has been adversely impacted. As we indicate above, that by itself is not a matter with which we are concerned.

As far as the fairness of the evaluation of Cooper verses foreign competition is concerned, the solicitation contains the domestic preference clauses from the Department of Defense Federal Acquisition Regulation Supplement (DFARS), including the Buy American-Balance of Payments Clauses, DFARS § 252.225-7006(B). There is no requirement that an agency in evaluating foreign items do more than apply these clauses and whichever international agreements are applicable. Technical Systems, Inc., 66 Comp. Gen. 297 (1987), 87-1 CPD ¶ 240.

Finally, Cooper argues that the Navy should consider oil consumption and maintenance costs as separate evaluation factors. The Navy states that these matters were considerations when it decided upon the maximum rpm and pressure to include in the RFP. The Navy states that it considered these factors when it decided not to raise the rpm limit in the amended specifications, which would have resulted in higher oil consumption and maintenance costs. The evaluation factors currently included in the RFP are consistent with the National Academy of Science report, cited earlier, which states that the purchase cost and fuel consumption are the two factors that should be used in procuring these types of engines. Contracting agencies are free to determine the manner in which proposals will be evaluated so long as the method selected provides a rational basis for selection. Bell Free Contractors, Inc., B-227576, Oct. 30, 1987, 87-2 CPD ¶ 418. We find the Navy had a reasonable basis for its

evaluation scheme and was not required to evaluate separately probable oil and maintenance costs in determining the low offeror.

The protests are denied.

James F. Hinchman
General Counsel