

Protest of)	Date: July 2, 1987
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BOILER, PRESSURE VESSELS)	
INSPECTION AGENCY, INC.)	
)	
Solicitation No. 059900-87-A-0037)	P.S. Protest No. 87-21

DECISION

Boiler, Pressure Vessels Inspection Agency, Inc., (BPV) timely protests the terms of Solicitation No. 059900-87-A-0037. BPV claims that the terms of the solicitation are unduly restrictive of competition and discriminate against small businesses. BPV requests an amendment to the solicitation that will enable it to bid.

Invitation for Bids (IFB) No. 059900-87-A-0037, issued January 26, 1987, by the Inglewood Facilities Service Office, Western Region, sought bids for inspections of boilers and unfired pressure vessels at various postal facilities. Bid opening for the solicitation was scheduled for February 27. However, by letter dated February 25, BPV protested the terms of the solicitation.¹⁷

BPV alleges that paragraph 6.1, "Qualifications of Contractors" (requiring the contractor to have in its employ a full time staff of inspectors) and 6.2, "Qualifications of Inspectors" (requiring each inspector to be commissioned by the National Board of Boiler and Pressure Vessel Inspectors (NBBPVI)) exclude small businesses and unduly restrict competition.

In his report to this office, the contracting officer states that the requirement that inspectors be commissioned by the NBBPVI was designed to promote safety and to comply with inspection codes and standards. The contracting officer contends that Postal Service inspection standards must be maintained when inspections are not conducted by Postal Service employees. He asserts that this objective can be achieved by using inspectors commissioned by the NBBPVI; in order to be commissioned by the NBBPVI, inspectors must be currently and actively employed by the bidder. Moreover, inspectors must pass a NBBPVI written examination.

The contracting officer knows of no other independent licensing organizations for boiler and pressure vessels inspectors. Therefore, she asserts that although the requirement

excludes some contractors, it ensures that inspectors are qualified, practicing, and knowledgeable as to both current inspection practices and changes in the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. Thus, the contracting officer concludes that requiring an inspector to be commissioned is a reasonable procedure for making sure that services procured meet the Postal Service's minimum needs. In addition, the contracting officer argues that full time inspectors are required to meet anticipated workloads.

Discussion

Our standard of review for challenges to the terms of a solicitation is as follows:

The determination of the government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Generally, when a specification has been challenged as unduly restrictive of competition, it is incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable.

Portion-Pac Chemical Corp., P.S. Protest No. 84-49, August 1, 1984, quoting Amray, Inc., Comp. Gen. Dec. B-208308, January 1983, 83-1 CPD & 43; accord, Action Enterprises, Inc. and American Vending, Inc., P.S. Protest Nos. 87-14, 87-15, March 13, 1987.

The contracting officer has provided prima facie support for the requirement that inspectors be commissioned by the NBBPVI to ensure the safety of Postal Service employees and to comply with inspection standards and codes. BPV has not demonstrated that this determination is unreasonable and this office finds no basis to set it aside. The contracting officer may require that

inspectors be certified in order to maintain the same inspection standards that are applied by Postal Service inspectors. The absence of such experience and certification could give rise to the reasonable concern, implicit in the contracting officer's position, that inadequate safety inspections may result in an unsafe working environment.

In view of the highly technical nature of inspecting boilers and unfired pressure vessels, the contracting officer reasonably concluded that inspectors should be tested and certified for competency. Such determinations will not be reversed unless they are arbitrary or unreasonable. Baker Masterlift, Inc., P.S. Protest No. 86-21, April 18, 1986. BPV has failed to demonstrate that the contracting officer has improperly determined the minimum needs of the Postal Service.

We reach a different result with the contracting officer's requirement that a contractor only employ full-time inspectors. The contracting officer considers this requirement necessary to ensure that safety and compliance standards are met, but the contracting officer has not established prima facie support for his contention that the restriction is reasonably related to the Postal Service's needs. The contracting officer has presented no evidence or analysis to support his assertion; instead, his rationale for such requirement is conclusory: "Attempting to maintain an inspection program with insufficient manpower is an early invitation to nonperformance which could jeopardize safety." Accordingly, the contracting officer has not presented a reasonable basis for the requirement; it overstates the Postal Service's minimum needs.

We find, given the circumstances (terms in the solicitation that overstate the Postal Service's minimum needs), that the solicitation is unduly restrictive of competition. Because bids have been opened for this project, the contracting officer is directed to cancel the solicitation and issue a new solicitation in accordance with this decision.

The protest is sustained in part and denied in part.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 2/23/93 WJJ]