

DECISION



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

FILE: B-214414.2 **DATE:** January 29, 1985

MATTER OF: Sunbelt Industries, Inc.

DIGEST:

1. Protest that solicitation limits on level of trace metals contamination in aluminum oxide abrasive grain in effect excluded recycled aluminum oxide and violated policy in favor of the use of recycled materials set forth in 42 U.S.C. § 6962 (1982) is denied. The requirement in subsection (c) of the statute that agencies procure items composed of the highest percentage of recovered materials practicable after the date specified in applicable guidelines does not apply where no guidelines for aluminum oxide have been issued pursuant to subsection (c) and where there is no showing that contracting officials lacked a reasonable basis for determining that the limits were required in order to satisfy the minimum needs of the government.
2. Protest that specification is unduly restrictive is denied where agency establishes prima facie support for contention that specification restrictions are needed to meet its minimum needs and protester then fails to meet its burden of showing that restrictions are clearly unreasonable.
3. Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried its burden of affirmatively proving its case.

Sunbelt Industries, Inc., protests the terms of invitation for bids No. AT/TC 19588-A, issued by the General Services Administration (GSA) to meet the requirements of the Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, for aluminum oxide abrasive grain. Sunbelt alleges that the provisions of the solicitation limiting the levels of certain trace metals in the aluminum oxide in effect exclude all but virgin (unused) aluminum oxide, thus contravening the national policy in favor of the use of recycled materials, and exceed the minimum needs of Tinker, thereby unduly restricting competition. We deny the protest.

Tinker uses aluminum oxide for abrasive blasting, that is, the propulsion of an abrasive media against an object by means of pressure or vacuum blasting equipment. Tinker blasts the metal surfaces of aerospace equipment and components, including jet engine parts, in order to clean and otherwise to prepare the surfaces for the subsequent application of plasma spray, plating and paint. The aluminum oxide can be either virgin grain, grain currently in use that has been recirculated through repeated applications within a blast cabinet, or grain which has been recycled or reprocessed.

Prior to 1983, Tinker purchased substantial quantities of aluminum oxide from Sunbelt, a producer of recycled aluminum oxide. Sunbelt informs us that these purchases were made pursuant to the provisions of military specification No. MIL-A-21380B or commercial item description No. A-A-1045. However, in January 1984, GSA issued invitation for bids No. AT/TC 19588, which included specification No. MAENP 84-01, to procure aluminum oxide for Tinker. MAENP 84-01 included provisions adding the requirement that the aluminum oxide consist of virgin grain and adding limits on the amount of trace metals, including iron, chromium, nickel, lead, cadmium and "Total Other," that the aluminum oxide could contain.

Sunbelt thereupon protested to our Office that the requirement for virgin aluminum oxide contravened the public policy in favor of the use of recycled materials and unduly restricted competition. Air Force officials subsequently concluded that recycled aluminum oxide could meet

Tinker's minimum needs in some circumstances and GSA accordingly canceled the solicitation. We then dismissed Sunbelt's protest as academic. See Sunbelt Industries, Inc., B-214414, July 20, 1984, 84-2 C.P.D. ¶ 66.

Although GSA eliminated the previous requirement in MAENP 84-01 for virgin aluminum oxide when it resolicited Tinker's requirements under solicitation No. AT/TC 19588-A, it retained in the revised MAENP 84-01 the limits on trace metals. Sunbelt thereupon filed this protest.

Sunbelt initially argues that the limits on trace metals in effect exclude recycled materials and thereby violate the public policy in favor of the use of recycled materials, as set forth in 42 U.S.C. § 6962 (1982).

Section 6962 provides, in pertinent part, that:

"(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items--

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under

subparagraph (B) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines. . . .

"(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall--

(1) as expeditiously as possible but in any event no later than five years after October 21, 1976, eliminate from such specifications--

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item."

We know of no guidelines prepared pursuant to 42 U.S.C. ¶ 6962(c) applying to aluminum oxide. Moreover, we note that GSA did not explicitly exclude recycled aluminum oxide. Rather, contracting officials imposed certain limits on the allowable amount of trace metals--limits which they claim to be performance-based and required in order to meet Tinker's minimum needs.

If this claim that the limits on trace metals are performance-related is reasonable, then we see no basis in section 6962 upon which to object. The legislative history of the statute makes clear that Congress intended to eliminate "arbitrary exclusion[s] of recovered materials" (emphasis added), H.R. Rep. No. 1491, 94th Cong., 2d Sess. 67 (1976), rather than performance-related limits. Accordingly, federal agencies were:

"to ensure that such specifications are based on performance and do not discriminate against recovered materials for reasons other than necessary performance requirements. Revised specifications will require reclaimed materials to the maximum extent possible without adversely affecting the intended end use of the item." Id. at 51.

Sunbelt, however, further alleges that the limits on trace metals exceeded Tinker's minimum needs, thereby unduly restricting competition.

The determination of the government's minimum needs and the best method of accommodating those needs are primarily the responsibility of the contracting agencies. We have recognized that government procurement officials, since they are the ones most 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. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. See Julie Research Laboratories, Inc., B-213143, Mar. 13, 1984, 84-1 C.P.D. ¶ 294.

When a protester challenges a specification as unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restrictions it imposes are needed to

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meet its minimum needs. But, once the agency establishes this prima facie support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable. See Julie Research Laboratories, Inc., B-213143, supra, 84-1 C.P.D. ¶ 294 at 3.

GSA and Tinker have established prima facie support for their contention that the limits on trace metals are required to meet Tinker's minimum needs. They indicate that abrasive media has in the past been subject to trace metals and organic contamination and claim that contaminated abrasive media has resulted in the flaking or diminished effectiveness of subsequently applied coatings. In particular, they have explained that when abrasive media contains high levels of metallic contamination, metallic particles may become embedded in the part being cleaned. The resulting close contact of dissimilar metals, they indicate, could lead to galvanic corrosion, which, in turn, could result in a poor bonding of the coating and a consequent diminution of the service life of the part. They contend that since jet engine parts operate with close tolerances and under extremely adverse environmental conditions, the risk of debonding must be reduced through the use of extremely rigid standards for abrasive media. They state that the need to avoid the use of contaminated aluminum oxide initially led them to require virgin material and then, once Tinker had developed a method of precisely measuring the contamination, to insist upon the trace metals standards in the revised MAENP 84-01.^{1/}

^{1/} We note that agency officials have also suggested that impurities which become embedded on the surface of the part may lead to the creation of a static electrical charge, thereby causing magnetic iron filings in the aluminum oxide to adhere to the part and prevent a good bonding of any coating subsequently applied. Given our conclusions with regard to the risk of galvanic corrosion, we need not discuss this theory.

In response, Sunbelt initially observes that the government's analysis of waste aluminum oxide, that is, the aluminum oxide which has been removed from use in the blast cabinets but not yet reprocessed, reveals the presence of trace metals at levels many times higher than that permitted under the trace metals standards of MAENP 84-01. Sunbelt explains that any batch of aluminum oxide is repeatedly recirculated within a blast cabinet and indicates that during this recirculation, minute pieces of the part being cleaned are abraded from the surface of the part and added to the abrasive media. Sunbelt cites a Tinker directive requiring only a daily visual inspection of the abrasive media, allegedly inadequate to detect minute metallic particles, and a weekly test for oil and particle size, and concludes that this apparent lack of concern with the significant increase in metallic contamination during the use of a batch strongly suggests that trace metals contamination is not really viewed by Tinker as a problem.

However, although Tinker admits that there is indeed a steady increase in metallic contamination during the use of the aluminum oxide, Tinker distinguishes this contamination, caused by the abrasion of the parts being cleaned, from any initial contamination of the aluminum oxide when purchased. Tinker indicates that before galvanic corrosion can occur, contact between dissimilar metals is required. Tinker claims that since it segregates abrasive media in different blast cabinets and uses each cabinet only for parts composed of the same alloy type, any metallic particles added to the aluminum oxide during internal recirculation will be of the same alloy type as the parts being blasted and, thus, will present little risk of galvanic corrosion if they subsequently become embedded in a part.

Although we recognize that Sunbelt denies that Tinker segregates abrasive media, Sunbelt's unsupported allegation is insufficient to meet its burden of affirmatively proving its case in this regard. See Adams-Keleher, Inc., B-213452, Mar. 6, 1984, 84-1 C.P.D. ¶ 273 (where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried its burden of affirmatively proving its case).

Sunbelt also argues that contracting officials have failed to consider that some of the trace metals for which MAENP 84-01 specifies limits occur naturally in aluminum oxide. However, Tinker indicates that these naturally occurring metal oxides are an integral part of the molecules of the abrasive grain and explains that the method of testing prescribed in MAENP 84-01 will primarily only detect the free, unbound metallic particles, that is, those most likely to become embedded in the part being blasted.

Sunbelt further maintains that Tinker has cited no instances in which metallic contamination of abrasive media has caused debonding. Sunbelt notes that in one of the instances of debonding cited by Tinker, only carbon and particles of the coating applied after blasting were found, while in another instance the agency investigation indicated that an organic substance apparently caused the debonding.

However, even if these debondings were not caused by trace metals contamination, this does not show that contracting officials were unreasonable in concluding that metallic contamination could lead to debonding. Nor does it demonstrate the unreasonableness of their conclusion that Tinker needed to reduce even the potential for debonding and the consequent impairment of the service life of critical jet engine parts subject to extremely adverse environmental conditions.

In reaching these conclusions, we do not overlook Sunbelt's allegations that "recovered materials are readily accepted by the aerospace and coating industry for use in applications similar to those proposed" and that "virtually every other user utilizes MIL-A-21380B." However, the acceptability of recovered materials is not at issue here since MAENP 84-01, as revised, does not require virgin aluminum oxide. Further, the customer invoices submitted by Sunbelt in support of its contention reveal only one customer which has chosen to apply MIL-A-21380B and this in no way demonstrates that contracting officials were unreasonable in determining that use of MAENP 84-01 rather than MIL-A-21380B was required in order to meet Tinker's

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specific, minimum needs. Consolidated Control Corp., B-185979, B-186682, Sept. 21, 1976, 76-2 C.P.D. ¶ 261 (GAO will not question a determination as to whether an existing federal or military specification will meet the actual needs of the agency in a particular situation unless such determination can be shown to have no reasonable basis); but cf. Central Mechanical, Inc., B-206030, Feb. 4, 1982, 82-1 C.P.D. ¶ 91.

Accordingly, we do not believe that Sunbelt has shown that the trace metals standards of MAENP 84-01 exceeded Tinker's minimum needs and unduly restricted competition.

The protest is denied.

for 
Comptroller General
of the United States