

DECISION

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

FILE: B-221329 **DATE:** April 25, 1986
MATTER OF: John Crane-Houdaille, Inc.

DIGEST:

1. Where the solicitation does not require preaward testing to determine whether offered seal assemblies meet a particular specification requirement for which none of the approved seals have been tested by the contracting agency, protest that the award should not be made to an offeror whose seal was not previously tested for meeting the requirement lacks merit, and any protest that the solicitation should have required testing is untimely since it was not filed before the closing date for receipt of proposals.
2. Where the solicitation is limited to approved seal designs and does not require any proof that the offered seals can meet a particular performance requirement, the question whether the awardee's seal can meet the requirement involves the awardee's responsibility.
3. Whether the contractor's delivered seal assembly actually conforms to the solicitation's performance requirements involves a matter of contract administration which is the responsibility of the procuring agency and not GAO.

John Crane-Houdaille, Inc. (Crane) protests the award of a contract to EG&G Sealol, Inc. (EG&G) under request for proposals (RFP) No. N00140-85-R-3038 issued by the Department of the Navy (Navy), Naval Regional Contracting Center, Philadelphia, Pennsylvania for four stern tube seal assemblies. The seal assemblies will be

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fitted to the stern tube propeller shafts of the aircraft carrier USS INDEPENDENCE. Crane contends that the EG&G seal does not meet the RFP's requirement that the Navy have previously approved the seal's design, and that the seal does not meet a particular performance requirement.

The protest is dismissed in part and denied in part.

The RFP provided that the design of the seal must have been approved and qualified by the Navy. There were only three seals, manufactured by Crane, EG&G, and Tyton Seal Co. (Tyton), for which the design had been approved and qualified. In addition, the RFP's specifications set forth certain performance requirements--including a requirement that the seal must accommodate an axial propeller shaft motion or displacement of + 2 inches.^{1/} The RFP also included a warranty provision under which the successful offeror warrants that its seal will meet the RFP's requirements for 12 months after the 1988 deployment date of the USS INDEPENDENCE. The RFP's evaluation criteria basically provided that an award would be made to the lowest priced responsible offeror whose offer complied with the RFP's material requirements.

Each manufacturer of the three previously approved seal designs submitted a proposal. EG&G offered the lowest price of \$156,250.00, Tyton offered \$167,911.50, and Crane \$240,205.60. The Navy awarded EG&G the contract.

Crane contends that EG&G's seal design could not have been approved by the Navy since a few months before the RFP's issuance the seal leaked during testing that the Navy conducted to determine whether to refit an entire class of ships with the seal. For such a class-wide replacement, the Navy requires a 1-year operational test on one ship before approving installation on others. Crane argues it was not possible that the seal could have been retested prior to the closing date for the receipt of proposals.

^{1/} Axial displacement refers to the motion of the propeller shaft along the axis or center line of the propeller--i.e., forward or backward.

The Navy responds that the current solicitation did not involve a class-wide replacement of seals that requires prior testing, and that the RFP did not require that offered seals have passed a prequalifying 1-year-at-sea test. The Navy further states that while leakage occurred during the testing of EG&G's seal, it was caused by inadequate piping of lubrication to the seal rather than by a fault in the seal's design. After the correction of the leakage problem, the Navy further tested the seal and concluded that it had operated successfully at sea for more than 1 year's cumulative time.

Crane challenges the Navy's determination that the 1-year-at-sea requirement was satisfied by the successful operation of the EG&G seal over 1 year's cumulative time. Additionally, Crane cites a February 24, 1983 Certification of Acceptability issued by the Navy to EG&G, which states that the EG&G seal design was approved for use aboard Navy surface ships but not in applications that are more extreme than + .5 inch of axial displacement. Crane contends that EG&G's seal cannot meet the current specification's axial displacement requirement which is four times more stressful than that for which the seal design had been approved.

The Navy points out that none of the three previously approved seals had been tested by the Navy for the ability to accommodate an axial displacement of + 2 inches, and explains that experience with the seals after their initial design qualification so increased the confidence of Navy engineers in their designs that those seals were considered eligible for this procurement. The Navy essentially decided that the RFP's 1-year warranty provision was sufficient to minimize the government's risk that an offered seal would not comply with the axial displacement requirement, and therefore it was not necessary to require prequalification testing for compliance with the requirement.

In our judgment, whether or not EG&G's seal passed or should have passed a 1-year-at-sea test did not affect the acceptability of EG&G's offer since the RFP required only that the seals have been approved and qualified by the Navy; it did not require that offered seals have passed such a test. EG&G's proposal offered to comply with the RFP's requirements, and the agency therefore had no basis to reject it. See Rolm Southern Calif., B-216955, Mar. 14, 1985, 85-1 CPD ¶ 327.

Regarding axial displacement, it is undisputed that none of the seals had been tested by the Navy for accommodating +2 inches of axial displacement and that the

designs of all three seals otherwise had been approved and qualified previously by the Navy. Since the RFP did not require the seals to have been tested specifically regarding the displacement requirement, Crane's protest that EG&G was ineligible for award because its seal did not pass such a test lacks merit.

In addition, Crane did not protest the RFP's method of meeting the agency's needs before submitting a proposal, and cannot now protest that the RFP should have required preaward testing since our Bid Protest Regulations require that any protest of an alleged solicitation impropriety apparent prior to the closing date for receipt of proposals must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1985).

Because the RFP did not require any proof that the offered seals could meet the RFP's specific axial displacement requirement, the issue of whether EG&G's seal in fact was able to do so involved only EG&G's responsibility, that is, its capability of meeting the RFP's material requirements. See Security Sys., B-217203, Aug. 26, 1985, 85-2 CPD ¶ 229. In awarding the contract to EG&G, the contracting officer determined that EG&G was responsible. Our Office does not consider a protest challenging such an affirmative responsibility determination unless there is a showing either that the determination may have been made fraudulently or in bad faith by contracting officials, or that the solicitation contained definitive responsibility criteria that were not applied. Dismas House of Ky., Inc., B-220406, Nov. 4, 1985, 85-2 CPD ¶ 522. Neither exception applies here since the protester does not allege fraud or bad faith, and the axial displacement requirement did not impose a definitive responsibility criterion, but a performance requirement.

Whether the contractor's delivered seals actually conform to the performance requirement involves a matter of contract administration which is the responsibility of the procuring agency and not our Office. Allied Materials and Equip. Co., Inc., B-219528, Oct. 24, 1985, 85-2 CPD ¶ 457.

The protest is dismissed in part and denied in part.

for Seymour Efron
Harry R. Van Cleve
General Counsel