



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pem All Fire Extinguisher Corporation
File: B-231343.3
Date: November 2, 1988

DIGEST

Contracting officer reasonably determined, based on the information available to him prior to award, that low bidder's fire extinguisher systems had been laboratory tested and met solicitation requirements.

DECISION

Pem All Fire Extinguisher Corporation protests the award of contract to Auto-X Company under invitation for bids (IFB) No. F10603-87-BA025 which was issued by Mountain Home Air Force Base, Idaho, for the supply of automatic kitchen range top fire extinguisher systems for use in base housing. The IFB's item description, as finally amended, provided a detailed list of requirements for the system among which were (1) that the system was to be "Underwriters Lab. [UL] listed;" and (2) that the system also "must meet [Air Force] requirements for extinguisher response time tests to be certified by a nationally recognized testing laboratory."^{1/}

When bids were opened on May 27, 1988, Auto-X was the low bidder at \$42,325 and Pem All the second low bidder at \$50,712.15. There is no indication in Auto-X's bid that the company took exception to any IFB requirement. The Air Force then began to process Auto-X's bid for award. Specifically, the contracting officer has informed us that, in assessing whether Auto-X was a responsible prospective contractor, he obtained a copy of a March 21, 1988, letter

^{1/} The IFB did not provide any other information as to the response time tests. Nevertheless, we understand that Tyndall Air Force Base Testing Laboratory had developed a standard for UL listing which required an extinguisher response time within 90 seconds or less from the onset of the triggering events.

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from UL to Auto-X in which UL informed the company that Auto-X's extinguisher unit "compli[ed] with the requirements for UL listing." The contracting officer states that the UL letter "certainly indicated that Auto-X met all UL requirements to include the 90-second [extinguisher response] time." In addition to this March 21 UL letter, the contracting officer states that he was in receipt of information from Tyndall stating that testing there of Auto-X's system showed that the system "not only activated within the 90 second response time requirement, but surpassed an under 60 seconds activation for both gas and electric ranges."

Based, in part, on the March 21 UL letter and the report on the Tyndall test results, the contracting officer determined Auto-X to be responsible and made an award to the company on June 21, 1988. Soon thereafter, as a result of inquiries from another bidder, the Air Force came into the knowledge that the listing mentioned in UL's March 21 letter did not include extinguisher response time.^{2/}

Pem All contends that it had incurred expenses in obtaining UL approval for its extinguisher response time whereas Auto-X did not incur a similar preaward financial burden or obtain a preaward UL listing which included response time and that these facts render improper the Auto-X award. The Air Force responds that the Auto-X award was properly made based on a reasonable belief that Auto-X complied with all listing requirements as of the award date.

It is clear that here the Air Force wanted some assurance from a source independent of the bidder that these fire extinguisher systems would work safely and effectively. It therefore imposed two requirements in the solicitation: (1) that the system be UL listed; and (2) that it "also meet [Air Force] requirements for extinguisher response time tests to be certified by a nationally recognized testing laboratory." (Emphasis added.) With regard to the first of these requirements, we point out that it may be proper in some cases for a solicitation to require a product that conforms to the standards of a particular testing firm, Gulf Coast Defense Contractors, Inc., B-212641, Feb. 28, 1984, 84-1 CPD ¶ 243, or to state that the certificate or label of that testing firm will be accepted as evidence that the

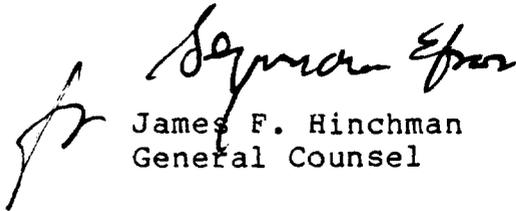
^{2/} Nevertheless, we understand that Auto-X did obtain UL listing for its extinguisher response time in late August 1988.

offered product meets applicable standards. 33 Comp. Gen. 573, 576 (1954). However, the absence of a seal of approval should not automatically exclude a noncertified product that in fact conforms to such standards. Arctic Marine, Inc., B-182321, May 14, 1975, 75-1 CPD ¶ 311.

As we noted above, as of the time of award the contracting officer was in possession of a letter from UL stating that Auto-X's product "complied with the requirements for UL listing." It appeared, therefore, that Auto-X met the IFB's "UL listing" requirement. What was not at that time known by the contracting officer, however, was that response time was not encompassed by that UL letter. Nevertheless, the contracting officer was told that tests which had been conducted in one of the Air Force's own laboratories indicated that Auto-X's system not only met a response time of 90 seconds but easily surpassed it.

Although we are unable to determine whether Tyndall's test conditions for the Auto-X system were the same as those used by UL, the fact that Auto-X subsequently did obtain UL listing as to its extinguisher's response time lends strong support to the Air Force's position that the Auto-X system did, in fact, conform to all the standards at the time of award. Under these circumstances, we think the contracting officer acted reasonably in selecting Auto-X for award.

Protest denied.


James F. Hinchman
General Counsel