



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Container Products Corporation

**File:** B-255883

**Date:** April 13, 1994

Joel Hughes for the protester,  
Wayne Evelhoch, Department of Energy, for the agency.  
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## DIGEST

Agency improperly awarded a contract under a solicitation requiring a steel enclosure completely enclosing specified components of a low level radioactive waste compactor, where the awardee proposed an enclosure made partly of polyethylene.

## DECISION

Container Products Corporation protests an award to CGR Compacting, Inc. under request for proposals (RFP) No. 66831D-BG issued by KAPL, Inc. on behalf of the Department of Energy (DOE) for a low level radioactive waste box compactor for use at the Knolls Atomic Power Laboratory, Schenectady, New York. Container Products argues that CGR's proposal did not meet material solicitation requirements.

The protest is sustained.

The box compactor was solicited for use at Knolls to compress low level nuclear waste into a steel box container to facilitate storage and shipping of these waste materials. The box is roughly 4 feet wide by 6 feet long by 4 feet deep and is placed in the compactor with a fork lift. A hydraulically driven compaction head drops vertically into the box and compresses whatever waste has been placed in the box. The box and the compaction head are required to be totally enclosed and continuously ventilated to create negative pressure within the enclosure which reduces the

<sup>1</sup>KAPL, Inc., a subsidiary of Martin Marietta Corporation, is the management and operations (M&O) contractor for DOE's Knolls Atomic Power Laboratory.

exposure of workers outside the enclosure to radioactive airborne particulates present in the enclosure. The RFP stated the following technical specifications pertaining to the minimum requirement that the enclosure be made completely of steel:<sup>2</sup>

"[Paragraph 3.3.2:] The compaction chamber enclosure shall be of steel plate construction, completely enclosing the compaction head and loading box. . . ."

"[Paragraph 3.3.8:] . . . The compactor enclosure panels shall be sealed together by welding to minimize leakage into or out of the enclosure. . . ."

"All internal surfaces of the enclosure and the compaction head shall be stainless steel . . . ."

The RFP also provided for a minimum experience requirement of offerors as follows:

"The supplier shall be regularly engaged in the design and manufacture of box compactors of like kind for a minimum of five years."

Award was to be made to the offeror submitting the lowest-priced, technically acceptable proposal.

Three offerors submitted proposals. KAPL found that only the proposals of CGR and Container Products were technically acceptable. CGR offered a price of \$305,800 and Container products offered \$350,437. On September 30, 1993, KAPL awarded the contract to CGR.

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<sup>2</sup>During the course of this protest, the agency provided the following reason for requiring the total steel enclosure:

"The fully enclosed steel compaction chamber provides physical protection of the operator relative to potential debris ejection during the compaction process and provides strength to prevent collapse of the structure under the negative pressure created by the [continuous ventilation] system."

On October 5, Container Products protested to DOE. On November 24, DOE denied the protest. Container Products protested the agency's decision to our Office on December 1.<sup>3</sup>

Container Products alleges, in part, that CGR's proposal does not satisfy the RFP requirement that the box and compaction head be totally enclosed by steel.<sup>4</sup> Container

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<sup>3</sup>Since this protest, which was first filed at the agency level after award, was filed at our Office well beyond 10 calendar days after award, the agency was not required to stop contract performance pending resolution of this protest. As a result, this contract was fully performed during the course of this protest.

<sup>4</sup>Container Products cites a number of other specification requirements with which CGR's product allegedly does not comply. In addition, a focus of the protest is Container Products' allegation that CGR did not satisfy the requirement that it have manufactured box compactors of "like kind" for a minimum of 5 years. DOE alleges that Container Products' protest only challenged the award on the basis that CGR's prior products were allegedly not of "like kind" to the item solicited and, thus, Container Products' allegation that CGR's proposed product does not meet the RFP requirement for a total steel enclosure is untimely because Container Products allegedly did not raise this issue until Container Products commented on the agency's report. We disagree. Although the primary focus of Container Products' protest letter was the "like kind" experience requirement, the protest letter also included the following allegations:

"[i]t will be noted in [attachments to the protest letter that] the CGR design is of the "open frame" type and does not provide a totally enclosed negative pressure compaction chamber of steel plate construction completely enclosing the compaction head and box . . . as required by the subject solicitation.

"By contrast, the design of the [product] quoted by [Container Products] in response to the subject solicitation . . . does in fact provide for . . . the totally enclosed negative pressure compaction chamber of steel construction completely enclosing the compaction head and loading box . . . as

(continued...)

Products asserts that, had it been afforded the same opportunity to submit its proposal under the relaxed RFP requirements as was CGR, Container Products would have been able to and indeed would have offered its product at a much lower price.

It is a fundamental rule of competitive procurements that all offerors be provided a common basis for submission of proposals. AT&T Communications, 65 Comp. Gen. 412 (1986), 86-1 CPD ¶ 247. When an agency relaxes its requirements, either before or after receipt of proposals, it must issue a written amendment to notify all offerors of the changed requirements. We will sustain a protest where an agency, without issuing a written amendment, relaxes an RFP specification that may prejudice the protester, e.g., where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. Id.; Federal Computer Corp., B-239432, Aug. 29, 1990, 90-2 CPD ¶ 175.

Here, the RFP required that the enclosure be made of steel "completely enclosing the compaction head and loading box." CGR's enclosure, as described in its proposal, has a gap on top of the enclosure between the steel plate walls of the enclosure and the entire perimeter of the compaction head. This gap is covered by a "dust boot" made of polyethylene. This polyethylene dust boot resembles the folded bellows of an accordion, and expands and contracts as the compaction head moves up out of and down into the waste box.<sup>4</sup> KAPL's evaluation of CGR's proposal specifically states that the polyethylene dust boot "surrounds the compaction head." Since the top of CGR's proposed enclosure consists, in part, of polyethylene, it is not a total enclosure made of steel as specified in the RFP. Thus, CGR's proposal did not meet specification requirements and should have been viewed as technically unacceptable. See W.D.C. Realty Corp., 66 Comp. Gen. 302 (1987), 87-1 CPD ¶ 248; IRT Corp., B-246991, Apr. 22, 1992, 92-1 CPD ¶ 378; Cylink Corp., B-242304, Apr. 18, 1991, 91-1 CPD ¶ 384.

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<sup>4</sup>(...continued)  
required by subject solicitation." (Emphasis in original.)

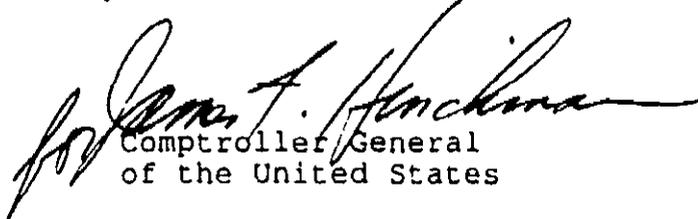
Thus, Container Products timely protested CGR's product's failure to meet the total steel enclosure requirement.

<sup>5</sup>In contrast, Container Products proposed an all-steel enclosure rigidly enclosing the corresponding top area of its product.

DOE essentially alleges that the specification for a complete steel enclosure is sufficiently satisfied by steel plates surrounding the four vertical sides and the floor of the area beneath the steel compaction head, as in CGR's proposal, and that the top of the enclosure above the compaction head need not be enclosed in steel. This position is inconsistent with the unambiguous specification requirements (quoted above), and simply suggests that the agency's minimum needs could be satisfied by something less than a "steel" enclosure "completely enclosing" the compaction head and loading box, and that the agency did not actually need "all" internal surfaces of the enclosure to be made of "steel." KAPL thus treated offerors unequally by accepting CGR's technically unacceptable proposal without relaxing the specifications for the other offerors.

In such circumstances, we would normally recommend that KAPL either reject CGR's proposal as unacceptable or amend the solicitation to reflect the agency's actual minimum needs and solicit revised offers. Here, however, the contract has already been fully performed. Under the circumstances, Container Products is entitled to its proposal preparation costs and its reasonable cost of filing and pursuing the protest, including attorney's fees. 4 C.F.R. § 21.6(d) (1993). The protester should submit its certified claim for proposal preparation and protest costs directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.6(f) (1).

The protest is sustained.<sup>6</sup>

  
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<sup>6</sup>Since the protest is sustained on the basis addressed herein, we need not consider Container Products' other protest issues.