Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Crest-Foam Corporation

File: B-234628.3

Date: June 20, 1990

Karen Hastie Williams, Esq., Paul Shnitzer, Esq., and Michael E. Cain, Esq., Crowell & Moring, for the protester.
David B. Dempsey, Esq., and Janet Z. Barsy, Esq., Akin, Gump, Strauss, Hauer & Feld, for Foamex, a division of Knoll International Holdings, Inc., an interested party.
Col. Herman A. Peguese, Office of the Assistant Secretary, Department of the Air Force, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that bulk fuel foam offered as an alternate for an approved source product was technically acceptable where the agency subjected the alternate product to the tests specified in the solicitation and the test results demonstrated that the product satisfied the solicitation requirements.

DECISION

Crest-Foam Corporation protests the award of a contract to Foamex, a division of Knoll International Holdings, Inc., under request for proposals (RFP) No. F04606-89-R-0165, issued by the Department of the Air Force for bulk fuel foam for A-10A aircraft. Crest-Foam contends that the bulk fuel foam offered by Foamex does not comply with the RFP specifications.

We deny the protest.

The solicitation was issued on February 23, 1989, to acquire bulk fuel foam, a material which is placed in aircraft fuel tanks to suppress explosions. The bulk fuel foam acquired under this solicitation will be furnished to a small disadvantaged business which was awarded a contract to fabricate sheets of bulk fuel foam into fuel foam "kits." The RFP at issue requires that the bulk fuel foam offered be

qualified prior to award, and calls for a small number of fuel foam sheets for prototyping into kits, to be followed by production runs of bulk foam, as warranted, for a base year and 2 option years.

Two proposals were received by the amended May 23, 1989, closing date for receipt of initial proposals, one from Crest-Foam and the other from Foamex. Crest-Foam indicated that it was a qualified source for the foam and Foamex submitted a qualification package to establish compliance with the RFP specifications. While Crest-Foam's proposal was being audited for pricing data, Foamex's product was qualified. As a result, the audit was canceled and a request for best and final offers (BAFO) was issued to Crest-Foam and Foamex, with a closing date of November 14. BAFOs were received by November 14 from both offerors. Coincident with its BAFO submission, Crest-Foam filed an agency-level protest on November 9, challenging the qualification of Foamex's product. By a letter dated February 9, the contracting activity denied Crest-Foam's protest, and on February 22, Crest-Foam filed this protest in our Office.

Essentially, Crest-Foam challenges the qualification of Foamex's product on the grounds that a number of critical tests were not performed, and that the test data that is available indicates that the foam does not satisfy the specifications. Specifically, Crest-Foam alleges that: (1) contrary to the applicable specification, Foamex's product generates significant electrical activity, and in fact ignites at minus 32 degrees Fahrenheit; (2) an explosion test on the foam was never conducted; and (3) the Air Force failed to flight-test this foam.

The contracting agency is responsible for evaluating the information provided by an offeror and ascertaining whether it is sufficient to establish the technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. Pitney Bowes, Inc., B-236302, Dec. 4, 1989, 89-2 CPD ¶ 511. Consistent with this principle, the responsibility for establishing procedures necessary to determine product acceptability also rests with the contracting agency. Northrop Corp., Precision Prods. Div., B-234237, May 3, 1989, 89-1 CPD ¶ 423. The agency further has the discretion to determine the testing necessary to assess compliance with the specifications in the solicitation, and we will only disturb the agency's determination where it is shown to be unreasonable. OAO Corp.; 21st Century Robotics, Inc., B-232216; B-232216.2, Dec. 1, 1988, 88-2 CPD ¶ 546. Here, Crest-Foam has not shown that the Air Force's determination to qualify Foamex's product is unreasonable.

On the contrary, the test results indicate that Foamex's bulk fuel foam complies with the requirements set forth in the solicitation.

Crest-Foam's first allegation is that Foamex's product produces unacceptable levels of electrical activity, incendiary ignition (sparks) at minus 32 degrees Fahrenheit, contrary to the RFP requirement that the product be tested at temperatures between plus 160 degrees Fahrenheit and minus 40 degrees Fahrenheit without producing electrical activity. The RFP specification states, in relevant part, that the foam shall meet the following criteria:

> "(1) The material shall not produce an incendiary ignition (sparks) or a charge buildup greater than that of MIL-B-83054 type I orange polyester when impinged with JP-4 fuel that does not contain antistatic additive.
>
> "(2) The dry electrical resistivity of the material shall be tested per 4.6.24 and be between 1.0 x 10 [7th] and 5.0 x 10 [11th] ohm-cm when tested at 75 degrees Fahrenheit +/5 degrees Fahrenheit."

The referenced test at 4.6.24 calls for a correlation study to demonstrate the effect of temperature and humidity on the electrical resistivity and resistance at temperatures ranging from 160 through minus 40 plus/minus 5 degrees Fahrenheit and at various levels of humidity. It does not require that there are no sparks produced throughout this temperature range.

Crest-Foam does not dispute the fact that Foamex's product meets the first criterion, and that it produces less incendiary ignition and charge buildup than the referenced orange polyester. Rather, the protester argues that Foamex's material fails the second criterion noted above, on the basis that the test data shows that it sparks at minus 32 degrees Fahrenheit. However, the purpose of testing over a broad temperature range is to establish that the charge buildup and incendiary ignition for the alternate product over the tested range is not greater than that for orange polyester, for which similar testing was conducted over the same temperature range for comparison purposes.

The specification in question does not include any electrical resistivity standard which the foam must meet at different temperatures, other than that required for the test at 75 degrees Fahrenheit. What is required for the

stated range of temperatures is that the foam be tested and that: (1) the electrical resistivity be measured; and (2) the electrical resistivity be reported. Thus, the specifications do not call for the absence of any incendiary sparks when the foam is tested at temperatures as low as minus 40 plus/minus 5 degrees Fahrenheit. The RFP provides a separate requirement in this regard, which is satisfied by the Foamex product, that the product offered not exceed the charge buildup or incendiary ignition of type I orange polyester. Neither the testing requirement nor the test results provides a basis to conclude that the presence of sparks at minus 32 degrees Fahrenheit constitutes an unacceptable safety hazard where, as here, the product tested matches or exceeds the performance of type I orange polyester over the test range and satisfies the electrical resistivity specification for 75 degrees Fahrenheit.

Crest-Foam next alleges that an explosion test was never conducted on Foamex's product and that this violates an explicit specification requirement. The Air Force acknowledges that it waived this testing requirement, but states that it did so because previous tests have demonstrated that this foam will meet the specifications. The Air Force explains that it has tested another type of foam, manufactured by Foamex, which contains a highly similar geometrical structure, and that the test demonstrated compliance with the specifications. The agency contends that these tests are sufficient because studies show that foams with similar geometrical structure suppress explosion to the same degree. While Crest-Foam challenges this waiver on the basis that there are factors, other than geometric structure, which may affect explosion suppression, it offers no evidence of noncompliance, and in fact does not even allege that Foamex's product fails to suppress explosion in accordance with the specifications. In fact, at the conference, Crest-Foam's technical expert acknowledged that most of the time, products of similar geometrical structure have the same explosion suppression effect. Under these circumstances, we find that the agency reasonably waived the explosion suppression test for Foamex's product on the basis that it had adequate information from which it could conclude that the product satisfied the RFP suppression requirement. See OAO Corp.; 21st Century Robotics, Inc., B-232216; B-232216.2, supra.

Finally, Crest-Foam alleges that Foamex's product should have been flight tested prior to approval, notwithstanding that there was no such requirement in the solicitation. In support of this position, Crest-Foam refers to a memorandum from an Air Force engineer which states that flight tests

should be run on Foamex's product before it is used across the board. Crest-Foam argues that not only is it unwise not to flight test Foamex's material, but also that it was not treated equally since its own product was flight tested.

The controlling fact is simply that there was no flight test requirement in this solicitation. The fact that Crest-Foam, as the previous sole source of the foam, voluntarily subjected its foam to flight tests is not relevant. Since the specifications clearly did not require flight testing prior to source approval, if Crest-Foam believed that such a test was necessary it was required to protest this issue prior to the date for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990).

Crest-Foam argues, in the alternative, that if Foamex's product meets the specifications then the Air Force must have lessened its requirements, and Crest-Foam should have been given the opportunity to submit a product of lesser quality which had a corresponding lower cost. As discussed above, this argument is based on a false premise since there is no evidence that the Air Force lowered its requirements for Foamex. Further, to the extent that Crest-Foam is alleging that the qualification requirements contained in this solicitation are less restrictive than those to which it was subject in the past, this argument is untimely since protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1).

Accordingly, the protest is denied.

James F. Hinchman
for General Counsel