



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gemini Laminating Corporation; Foam Design, Inc.; and Illig Industries, Inc.

File: B-245223

Date: December 23, 1991

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DIGEST

1. Allegation that specified physical characteristics for foam sleeping pads are restrictive because they do not reflect the actual minimum needs of the agency is denied where the record shows that the agency reasonably determined that the characteristics were related to its need for durable pads and where the protesters have provided no substantive response to the agency's position in this regard.

2. Allegation that a portion of a specification that requires sleeping pads made by a particular means of production is restrictive is denied since protesters admit that their products cannot meet other specification requirements which were not restrictive of competition and, thus, could not have been accepted for award whether or not the solicitation had been amended to delete the requirement for the particular method of manufacture.

DECISION

Gemini Laminating Corporation; Foam Design, Inc.; and Illig Industries, Inc. protest the terms of invitation for bids (JFB) No. 7FXI-M7-91-8424-S, issued by the General Services Administration (GSA) for foam sleeping pads used by the Forest Service, U.S. Department of Agriculture, as cushioning under sleeping bags used by firefighters in the course of fighting forest fires. The protesters allege that the specifications are restrictive of competition.

We deny the protest.

The IFB was issued on May 20, 1991, containing revised specification No. 5100-522A, dated March 1991, which superseded interim specification No. 5100-00522, dated July 1985, under which all three protesters had supplied foam sleeping pads to the government.

In pertinent part, section 3.2.1 of the revised specification required that pads be manufactured under a high pressure process that results in a fine cell structure and stated that the pads "shall be split from buns and shall not have skin faces." This description relates to a particular manner of manufacture known as the "bun splitting" method in which foam is baked in an oven and resembles a loaf of bread; the "crust" or "skin" is then cut away, and the foam is sliced to make the correct size pads. According to the agency, this method is distinguished from the "continuous chopping" method of making pads in which the foam is formed into a single sheet between rollers which impart a "skin" to it. The 1985 specification had previously not specified a method of manufacture and, according to the record, the protesters had used the continuous chopping method in the past to make pads.

Section 3.2.3 of the revised specification contains a table (Table I) of physical properties to which sleeping pads were required to conform. The two requirements which appear to cause the protesters the most concern are minimum tensile strength and maximum foam cell size. The tensile strength requirement essentially provides that the pads have to withstand a stretching stress of at least 45 pounds per square inch (psi) without rupturing. The cell size requirement limits foam cells to no greater than 0.025 inches. The 1985 specification had originally contained a 45 psi tensile strength requirement although, as the agency reports, several recent contracts had contained a relaxed requirement of 35 psi in response to supplier suggestions that a better product would result. The 1985 specification did not contain a minimum cell size requirement.

The agency reports that these changes to the specification were made as a result of Forest Service efforts beginning in 1990 to respond to field complaints¹ from firefighters to the effect that the pads being supplied under the 1985 specification lacked comfort, durability and

¹Formal quality assurance complaints were not filed because, according to the Forest Service, although the pads provided under the earlier specification presented problems to the firefighters, they were nonetheless in full conformity to the specification as then written.

slip-resistance. The firefighters found that the previously produced pads, which had "skins," were too slippery to insure that the sleeping bags, which are frequently used on inclined ground with irregular surface features such as rocks, would remain in place on the pads. In addition, they found that the pads were too "stiff" or "boardy" and thus did not provide a comfortable surface on which to sleep. Moreover, the Forest Service found that the reduced tensile strength permitted under several contracts was a "failed experiment" and that a return to the 45 psi requirement would result in a longer lasting pad. Finally, the Forest Service states that a minimum cell size was introduced to increase material uniformity, to further promote slip-resistance, and to make the pads easier to clean and reuse since dirt was less likely to enter the smaller cells.

The firms filed this protest on August 14, challenging the specifications as restrictive. Bids were opened on August 29. Of the 14 bids received, 6 were rejected as nonresponsive for reasons unrelated to the specifications. Gemini's bid was rejected because the firm stated that it would supply pads under the 1985 specification. Of the seven responsive bids received, one was from Illig and another from Foam Design. GSA reports that Illig is apparently in line for award since it submitted the low, responsive bid; Foam Design is third low.

The protesters challenge both the table of physical characteristics listed in section 3.2.3 of the specification and the requirement that the "bun splitting" method of pad manufacture be used. With regard to the physical characteristics, the firms allege that the requirements for increased tensile strength and minimum cell size do not reflect the minimum needs of the government--rather, in their view, the listed characteristics were included to insure that bidders offer pads made by the "bun splitting" method. It is the protesters' view that the only "functional requirements" of the government are for a slip-resistant non-boardy sleeping pad. In this regard, the firms challenge the IFB restriction to one means of manufacture since, in their view, alternate means of production--such as the continuous chopping method--can result in pads which meet these "functional requirements." To this end, the firms assert that the government should have simply stated its functional requirements in terms of performance criteria and left the choice of how to meet those criteria to competing bidders.

The agency states that it specified the bun splitting method of manufacture to eliminate the smooth skins produced by other processes in order to promote slip-resistance. GSA also maintains that slip-resistance and "non-boardiness" are only two of the government's needs and states that the

protester's position essentially ignores other needs, such as durability, which is promoted by the increased tensile strength and minimum cell size requirements.

Government agencies are responsible for determining their needs and drafting specifications that reflect those needs. Specifications, however, may not reflect more than the government's minimum needs, and we will sustain a protest if we find that the specifications exceed the government's actual needs and are therefore unduly restrictive. See Southern Technologies, Inc., B-239578; B-239578.2, Sept. 6, 1990, 90-2 CPD ¶ 394.

The record here does not provide us with a basis for concluding that the agency's specifications exceed its reasonable needs. The protesters' position relies, in our view, on an overly narrow reading of what the agency's minimum needs are. As indicated above, the protesters state that the Forest Service's needs are limited to pads which are slip-resistant and "non-boardy," criteria which the firms characterize as the only "functional requirements" of the government. The record, however, does not support the view that the agency's needs are so limited.


For example, the Forest Service's review of its minimum needs reflects that increased durability was a further need which it sought to address in revising the 1985 specification. To this end, tensile strength requirements were returned to the original more stringent requirement to promote increased resistance to tearing, thus increasing durability and insuring a longer useful life for the pads. This position, which appears reasonable on its face, has not been refuted by the protesters.

Further, the record shows that the minimum cell size requirement was introduced in the revised specification to insure that the pads were easy to clean and capable of reuse. In addition, the cell size requirement, as noted by the agency, helps to insure that the composition of the pads is more uniform, thus promoting durability and additional slip-resistance. Again, the requirement appears reasonable, and the underlying rationale for it has not been contradicted by the protesters.

Given our conclusion that the requirements for tensile strength and cell size have not been shown to be in excess of the government's needs, we see no need to address the protesters' objection to section 3.2.1 of the specification which requires the "bun splitting" method of pad manufacture because we do not find that the protesters were prejudiced by the inclusion of the restriction.

Underlying the protesters' objections to the inclusion of the requirement that the "bun splitting" process be used is that they are unfairly precluded from offering what they term their "preferred" products--products which are produced by the "continuous chopping" method of pad manufacture. However, the protesters also state that it is practically impossible for this method of production to produce a foam pad which is slip-resistant, "non-boardy" and which meets all of the required characteristics, including tensile strength and cell size, set forth in Table I of the specification. Since, by their own admission, the protesters' "preferred" products cannot meet the tensile strength and cell size requirements and still meet the unchallenged requirements to be slip-resistant and "non-boardy," we fail to see how the protesters are prejudiced by the inclusion of the "bun splitting" requirement. In this regard, prejudice is an essential element of a viable protest and where no prejudice is shown or is otherwise evident, a protester cannot prevail. See Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130; Honeywell Info. Sys., Inc., B-191212, July 14, 1978, 78-2 CPD ¶ 39.

The protest is denied.


for James F. Hinchman
General Counsel