



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Himolene Incorporated

**File:** B-244760.2

**Date:** December 27, 1991

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David K. Shewmaker for the protester.  
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for the agency.  
Peter A. Iannicelli, Esq., and Jerold D. Cohen, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

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### DIGEST

Absent a showing that the contracting agency's tests on product samples were defective or improperly conducted, the General Accounting Office has no legal basis to object to the agency's finding that certain of the protester's samples did not conform to the required characteristics set forth in the solicitation.

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### DECISION

Himolene Incorporated protests the rejection of six samples it submitted to the General Services Administration (GSA) under request for proposals (RFP) No. 2FYS-AY-91-0012-N for plastic bags. Himolene alleges that the samples were not evaluated fairly by the GSA laboratory or in accord with the requirements of the solicitation. We deny the protest.

Issued on December 11, 1990, the solicitation requested offers for 2-year requirements contracts for various types of general purpose plastic bags. The RFP solicited offers for any or all of 53 line items that included 24 different types of bags (i.e., different national stock numbers) to be delivered to diverse locations throughout the United States. GSA conducted the procurement as a competitive negotiation because of the volatility of the market for resin, the basic raw material for plastic.

GSA determined that serious quality problems in the past made it necessary to require and test bag samples. Offerors therefore were instructed to submit ten representative samples of each type of bag upon which an offer was made for testing to determine whether the bags met the characteristics set forth in the RFP. Even though the

procurement was conducted as a competitive negotiation, the RFP warned that "Failure of these samples to conform to the required characteristics will require rejection of the bid."<sup>1</sup>

Himolene submitted a proposal on 18 line items, including 14 different national stock numbers, with samples well before the January 18, 1991, closing date. The samples were tested by the GSA laboratory for compliance with the item purchase description and appropriate commercial item description, both of which were set out in the RFP.

Initially, GSA's laboratory determined that the samples Himolene submitted for six national stock numbers did not conform to the required characteristics for various reasons. Therefore, GSA rejected Himolene's offer for the nine line items requiring those six national stock numbers. GSA requested a best and final offer from Himolene for the remaining nine line items requiring supply of the eight national stock numbers that the laboratory determined met the required characteristics.

Himolene filed an agency-level protest by letter of June 20, 1991, questioning GSA's evaluation of the samples that were determined to be nonconforming. GSA denied Himolene's protest by letter of August 13, and Himolene filed its protest in our Office on August 30.

Concerning line item 46 (national stock number 8105-01-174-0945), in its investigation concerning Himolene's protest GSA discovered that the laboratory had evaluated only four samples rather than the ten bags required in the applicable commercial item description. Subsequently, GSA advised our Office that it has reopened negotiations with Himolene and other affected offerors and will test new samples in accord with the commercial item description. Accordingly, the protest is academic with respect to this line item. See Hawthorne Power Systems, B-238447, May 8, 1990, 90-1 CPD ¶ 459.

Regarding GSA's evaluation of the other five samples, we will not substitute our judgment for that of agency testing and procurement officials unless the record establishes that their judgment was without a basis in fact, or that the samples were not evaluated in accordance with the requirements of the purchase description. ATD-American Co., B-231794, Oct. 18, 1988, 88-2 CPD ¶ 364.

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<sup>1</sup>In planning the procurement, GSA decided that it could not allow resubmission of failed samples for further testing in view of the length of time involved in the testing process.

Himolene attempts to discredit the agency's evaluation of the load capacity of samples representing four national stock numbers<sup>2</sup> by pointing out that some of its bags passed the tests while others of the same gauge film did not. Himolene also asserts that it is possible that GSA caused some of the bags to rip by throwing the full metal food cans used to test heavy duty bags and the books used to test light duty bags into the bags before testing the load capacity. Himolene attempts to discredit the agency's evaluation of seam continuity<sup>3</sup> by asserting that its bags are made by the "Star Seal" method and that such bags are noted for being leak-resistant. Finally, Himolene argues that its own laboratories have tested duplicate bags from the same production runs and that the duplicate bags have been found to conform to all characteristics set out in the RFP.

The agency and one of the awardees respond to Himolene's assertions by pointing out that there are a number of variables in the manufacturing process that can cause bags supposedly made of the same gauge film to test differently. Among other things, the agency and awardee cite changes in raw materials, possible drift in machine settings, changes in machine operators, and variations in temperature settings as potential causes of inconsistent load capacity and seam continuity test results. GSA argues that since all samples were evaluated in accord with applicable item purchase description and commercial item description, it is likely that the cause of any seemingly inconsistent test results was different manufacturing conditions for different samples--even for samples made in the same production run.

Himolene simply has not shown that there were any flaws in the evaluation methods. The evaluation test documents contain no evidence to support the protester's contention that the evaluators were somehow responsible for Himolene's samples failing either the load capacity or the seam continuity tests. From the record before us, it appears that the tests were conducted in the manner set forth in the RFP. When Himolene's samples developed tears of more than 1 inch in length in the load capacity tests or allowed some leakage in the seam continuity tests, the samples were

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<sup>2</sup>National stock numbers 8105-00-579-8451 (line items 10-13) and 8105-01-175-5533 (line item 48) have light duty ratings of 25 and 15 pounds, respectively, while national stock numbers 8105-01-221-3236 (line item number 50) and 8105-01-221-3239 (line item number 53) both have heavy duty ratings of 75 pounds.

<sup>3</sup>Samples of national stock number 8105-01-174-0942 (line item 43) failed the seam continuity tests.

properly rejected in accord with the IFP's evaluation criteria.

In any event, Himolene's allegation that its samples passed all tests conducted by Himolene's own laboratories is insufficient to nullify the agency's findings without a showing that the government tests were in some way defective or improperly conducted. See Cathey Enterprises, Inc., B-194334, June 13, 1979, 79-1 CPD ¶ 418. Here, Himolene has made no such showing as it has proffered no evidence that the technical evaluation was anything other than fair and reasonable and consistent with the evaluation criteria. See Designe Tech, B-240290, Nov. 2, 1990, 91-1 CPD ¶ 69.

The protest is denied.

  
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General Counsel