



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** California Inflatables Company, Inc.

**File:** B-249348

**Date:** November 9, 1992

Jacob H. Fischman, Esq., for the protester.  
Carl Simmons for Engineered Fabrics Corporation; Keith D. Smith for Bell Avon, Inc.; and Douglas K. Olson, Esq., Kilcullen, Wilson and Kilcullen, for Amfuel, interested parties.  
P.E. Zanfagna, Jr., Michael G. Winchell, and Jeffrey A. Epstein, United States Marine Corps, for the agency.  
Tania L. Calhoun, Esq. and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that specification is impossible to meet is denied where protester presents no clear and convincing evidence to show such impossibility.
2. Protest that specification overstates agency's minimum needs is denied where record shows requirement relates to human safety and national defense and is not only reasonable but is designed to achieve the highest possible reliability and effectiveness.

### DECISION

California Inflatable Company, Inc. (CICO) protests the specifications contained in request for proposals (RFP) No. M67004-92-R-0088, issued by the United States Marine Corps for 20,000-gallon collapsible fabric fuel tank assemblies. CICO primarily argues that the requirement that the coated fabric used for the tanks strictly meet the purchase description cannot be met.

We deny the protest.

Prior procurements of these fuel tank assemblies were made under a specification issued by the Department of the Army and modified by the Marine Corps to meet its mission requirements; tank assemblies made under that specification were purchased from various suppliers for use in Operation Desert Shield/Desert Storm. In 1991, CICO was awarded a

contract with the Marine Corps to supply bulk fuel tanks, a component of the tank assembly, under the above-mentioned specification. In January 1992, the Marine Corps wrote a Statement of Work (SOW) and a Purchase Description (PD) for the fuel tank assemblies; the subject solicitation is the first procurement under this SOW and PD. The solicitation was issued on April 2 and called for prices on three lots of fuel tank assemblies; the agency reserved the right to award either Lot I or Lots II and III.

In the course of a May performance test of the tanks supplied by CICO under the prior contract, the Army and the Marine Corps determined that fuel was seeping through the tanks. The Army's engineer concluded that fuel would be less likely to seep or diffuse from the tanks if the specification were amended to require a minimum thickness of 15 millimeters of coating on each side of the fabric--the existing specification did not require a minimum coating thickness except for the exposed edges, whose coating was to be 10 millimeters thick. On June 3, the Marine Corps incorporated a revision to the PD under amendment No. 002 to require a minimum of 15 millimeters of coating for each side of the fabric and to provide definitions to clarify the existing coated fabric requirements.'

Prior to the closing date for submission of proposals, CICO filed an agency-level protest and requested an extension of the closing date. The contracting officer denied the request and informed CICO that a formal response to its protest would issue prior to award. Three proposals were received by the extended June 30 closing date; CICO did not submit an offer. Bell Avon was the apparent low offeror; it confirmed its offer on June 30 and July 1. CICO interpreted the contracting officer's refusal to extend the closing date of the solicitation as a denial of its protest and filed a protest with our Office on July 8.

CICO protests that the solicitation's requirement that the coated fabric strictly meet, without deviation, the specifications in the PD is "incapable of being met." CICO bases this argument on information it received from its vendors for the coated fabric. Both of these vendors declined to provide CICO with a quote for the coated fabric and informed CICO that no test method existed to validate the PD requirements, specifically the requirement for a minimum of 15 millimeters of coating on each side of the fabric.

The contracting agency has the responsibility for drafting proper specifications that reflect the government's needs. Our Office will not substitute its judgment for the contracting agency's unless there is clear and convincing evidence that the specifications are in fact impossible to

meet or otherwise unduly restrict competition. Citrech, Inc., B-227958, Nov. 16, 1987, 87-2 CPD ¶ 487; Cardion Elacs., B-218566, Aug. 15, 1985, 85-2 CPD ¶ 172.

The record shows that while meeting the requirements may be difficult, the firms that submitted offers believe that the requirements are achievable. Three offerors submitted proposals under this solicitation; none took exception to the coated fabric requirements. In fact, each offeror has commented on this protest to reaffirm its intention to meet the requirements. While CICO asserts that its two vendors refused to supply it with prices for the coated fabric because of the minimum 15 millimeter coating requirement, both of those vendors made offers to Bell Avon stating their willingness to work with the agency and Bell Avon to assure the required coating thickness. As to the availability of tests to validate adherence to the specifications for the coated fabric, Bell Avon asserts that it has a proprietary method for checking the gauge on each side of the fabric, and the agency has identified several other methods of testing.<sup>1</sup> CICO, in its comments on the agency report, does not rebut the agency's assertion that testing methods are available except to say that the evidence supports CICO's position; we disagree. Since CICO has presented no clear and convincing evidence to show that the specification is impossible to meet, we deny this ground of protest.<sup>2</sup>

CICO next protests that the requirement that the coated fabric have a minimum thickness of 15 millimeters on both sides overstates the agency's needs, because the agency previously found that CICO-supplied tanks with a minimum coating thickness of 10 millimeters on the exposed edges were "useable."

An agency is required to specify its needs in a manner designed to promote full and open competition. See LaBarge Prods., Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510. Restrictive provisions should only be included to the extent necessary to satisfy the agency's minimum needs. Where, as here, a solicitation requirement relates to human safety or

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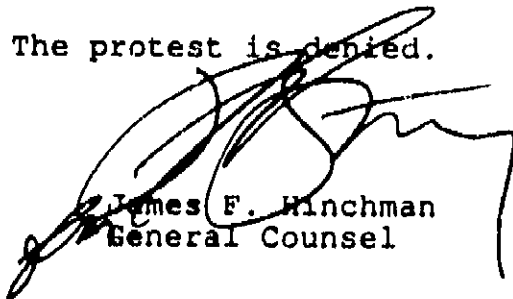
<sup>1</sup>These include using calipers, micrometers, and skivers.

<sup>2</sup>In its initial protest, CICO complained that the agency "abdicated responsibility" for its specification by failing to state what tests were to be performed to objectively demonstrate adherence to the specification. The agency in its report responded to these issues, and CICO in its comments did not rebut the agency's response. We consider this issue to be abandoned by the protester and will not consider it. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

national defense, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results but the highest possible reliability and effectiveness. See United Terex, Inc., B-245606, Jan. 16, 1992, 92-1 CPD ¶ 84; American Airlines Training Corp., B-217421, Sept. 30, 1985, 85-2 CPD ¶ 365. We find the agency requirement here to be reasonable.

The record shows that the agency changed the specification for the coating thickness from a required 10 millimeters on the exposed edges to a required minimum of 15 millimeters on both sides of all of the coated fabric because it found that tanks with the former requirement seeped fuel.<sup>3</sup> The Army engineer who inspected the previously-supplied tanks stated that a thicker coating would result in a tank more resistant to seeps and diffusion; on the basis of that recommendation, the agency amended the coating thickness requirement. The agency reports that these collapsible tanks are to be deployed in the field in the event of a national emergency, and that similar tanks were used in Operation Desert Shield/Desert Storm. The agency asserts that if the tanks seep fuel it could affect both national defense and human safety. We find that the agency's goal to minimize the potential for failure is obviously reasonable, and the protester has not presented evidence to indicate otherwise.<sup>4</sup>

The protest is denied.



James F. Hinchman  
General Counsel

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<sup>3</sup>The agency found that the tanks seeped or leaked fuel, while the protester contends that the tanks diffused fuel. The protester does not contest the agency's finding.

<sup>4</sup>The protester fails to mention that its tanks with a 10 millimeter coating on the exposed edges were found "useable" only because the agency determined that its specifications were inadequate and that to terminate the contract for default was therefore not a viable option; instead, CICO accepted a no-cost/no liability cancellation for half of the total quantity under the contract.