Evans

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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Automated Power Systems, Inc.

File: B-251019

Date: March 2, 1993

Richard D. Lieberman, Esq., Feith & Zell, for the protester.
Elaine A. Eder, Esq., U.S. Coast Guard, Department of Transportation, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly approved awardee's product for inclusion on qualified products list despite lack of detail concerning certain test results is denied where test results in fact were sufficient to show that awardee met most qualification requirements, and any relaxed requirements as to testing details had been similarly relaxed for protester.

DECISION

Automated Power Systems, Inc. (APS) protests the award of a contract to Nutel Electronics under invitation for bids (IFB) DTCG36-92-B-00041, issued by the U.S. Coast Guard for solid state flashers. A flasher is part of the beacon assembly on buoys used in and around navigable waters. It is an electrical device whose function is to interrupt the power to an electric light beacon, causing the beacon to flash. APS alleges that the agency improperly placed Nutel on the qualified products list (QPL) for this item.

We deny the protest.

BACKGROUND

The IFB required bidders to offer flashers that had been tested and approved by the agency for inclusion on the QPL in accordance with Federal Acquisition Regulation (FAR) subpart 9.2. As of the June 29, 1992, bid opening, APS was listed on the QPL for flashers; Nutel was not. However, as Nutel was the low bidder, the agency decided to give the firm the opportunity to qualify its product. Nutel submitted the required plan for qualification testing to the Coast Guard on July 24. Upon approval of the test plan,

testing was conducted during August and completed on September 1. Environmental tests, including vibration, shock, and immersion tests, were conducted by an outside laboratory. The remainder of the testing--primarily electrical--was performed by the Coast Guard, with an employee of the specification preparing activity (SPA) witnessing the tests and recording the results. Based on all of the test results, the SPA determined that Nutel's flasher met those requirements, and added Nutel to the QPL on September 3. On September 24, the Coast Guard awarded the contract to Nutel.

On October 14, 1992, APS received a copy of Nutel's test data package in response to a request under the Freedom of Information Act. APS filed this protest on October 21, essentially alleging that Nutel's qualification testing failed to establish that its flashers meet the Coast Guard's requirements, and that the agency's acceptance of Nutel's flasher amounted to an improper waiver of its requirements.

DISCUSSION

Because limiting a contract award to an approved source or product is inherently restrictive of competition, a contracting agency that so restricts an award must give nonapproved sources a reasonable opportunity to qualify their products. 41 U.S.C. § 253c(c)(4) (1988); FAR § 9.202(a)(2); Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2. In this connection, the activity that established the qualification requirement is responsible for determining whether a product conforms to the qualification standards; we will not question an agency's judgment in this respect unless it is shown to be unreasonable. See C-R Control Sys., Inc., B-220017.2, Feb. 14, 1986, 86-1 CPD ¶ 162. Where a protester alleges, as here, that the agency has improperly waived or relaxed qualification standards for a single bidder, we will review the record to determine (1) whether the relaxed requirement meets the agency's minimum needs and (2) whether the agency treated all bidders equally in applying the requirement. See Goodyear Tire & Rubber Co., 72 Comp. Gen. 28 (1992), 92-2 CPD ¶ 315.

APS offers numerous challenges to the acceptability of Nutel's qualification tests. For example, APS contends that certain tests were not conducted in accordance with the agency's testing requirements, and that the results thus fail to demonstrate compliance with the specifications. With respect to certain other requirements, APS alleges that the test results were recorded simply as "pass," and as such were not specific enough to establish that the flasher performed according to the specifications. We have reviewed the record of Nutel's qualification testing in light of APS' allegations, and conclude that Nutel's test results for the

most part establish compliance with the specifications. In the few cases where the tests were not conducted strictly according to the requirements, discussed below, the agency's waiver either was immaterial or was not prejudicial to APS.

ELECTRICAL ISOLATION

APS alleges that Nutel's qualification testing failed to establish that the Nutel flasher meets the requirement for electrical isolation of terminals. The testing requirement, at U.S. Coast Guard Specification No. E/GICP-169G paragraph 4.4.4, provides as follows:

> "Connect +18 volts DC between each terminal and one of the lampchanger mounting holes in the case for at least 5 seconds, note the current flow and calculate the resistance. The resistance shall not be less than 500k ohms between each terminal and the case in order to comply with the requirements of [paragraph] 3.6.1."

(Paragraph 3.6.1 provides that "each flasher terminal shall be electrically isolated from the case by at least 500k ohms.") Nutel's test plan, however, outlined a different procedure:

> "Ground one of the four mounting holes on the flasher and connect 18 volts DC through a 510k ohm resistor to each of the six terminal lugs one at a time while measuring the voltage from the terminal under test to ground with the Digital Multimeter. Any reading of less than 9 volts constitutes a failure."

APS argues that this deviation from the required procedure fails to demonstrate exact conformance with the specification, and thus compels rejection of the Nutel flasher. We disagree. The agency points out that the purpose of the test is to ensure that the flasher case is electrically isolated from the terminals by at least 500,000 ohms, and that the test method used by Nutel satisfies this purpose. APS does not challenge the agency's explanation of the underlying purpose of the test, and does not argue that Nutel's test method will not establish compliance with the electrical isolation requirement. Indeed, APS concedes that "if performed correctly both procedures will yield similar results." Moreover, APS does not dispute the result of Nutel's test--that Nutel's flasher demonstrated resistance within the required limit. Accordingly, we think the agency reasonably concluded that, while the Nutel test was different from the standard test, the results were sufficient to establish conformance with the electrical

isolation requirement. We therefore find that the agency did not waive any material qualification requirement here.[1]

LAMP-OUT SENSOR AND CONTROL

APS asserts that Nutel's test results do not contain enough information to establish that its flasher meets the lamp-out sensor and control requirement. The lamp-out sensor and control test is used to verify that the flasher will activate the lampchanger (another part of the buoy beacon assembly), causing a new lamp to move into the operating position when an operating lamp fails. It also is used to ensure that a brief interruption of power to the lamp circuit, other than a lamp failure, does not cause the lampchanger to activate a new lamp. The testing requirement, at paragraph 4.4.4 of the specification, provides:

> "With the flasher connected to a lampchanger . . . remove the operating lamp and verify that the flasher activates the lampchanger stepping mechanism to place the next lamp into the operating position (3.9.8). Insure that a momentary discontinuity in the lamp circuit does not activate the 'F' circuit with a 0.25 lamp (3.9.8.1)."

Nutel's test plan essentially paraphrased the specification, stating that it would verify that the lampchanger activated when a lamp was disconnected, and failed to activate when the lamp was disconnected momentarily.

APS maintains that Nutel's test does not establish compliance with the lamp-out sensor and control requirement because its test plan did not set forth the technical specifications, paragraphs 3.9.8 and 3.9.8.1, that were referenced parenthetically in the paragraph 4.4.4 test requirement.

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[1]APS also asserts that the Coast Guard did not properly test the Nutel flasher for electrical isolation in that it recorded only one voltage reading instead of the six--one from each terminal--required by the specification. This argument is untimely, as APS did not raise it until its second set of comments--the final submission in the record--even though it had received the test results on which this allegation is based 3 months earlier. See 4 C.F.R. § 21.2(a)(2) (1992); Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130.

We disagree. Nutel's test plan addressed all of the testing requirements set forth in paragraph 4.4.4 of the specification, and is not alleged to be inconsistent in any way with the referenced technical specifications. This being the case, and because there was no specific requirement that Nutel provide greater detail, we do not think it was necessary for Nutel to incorporate into its plan the language of the referenced technical specifications. Moreover, APS' test plan was identical to Nutel's in this regard--it addressed the performance of the flasher and lampchanger in accordance with the paragraph 4.4.4 requirements without enumerating the technical specifications in paragraphs 3.9.8 and 3.9.8.1. Since Nutel's plan addressed the testing requirements and, in any case, APS and Nutel were treated equally in this regard, we have no basis to question the agency's conclusion that Nutel's flasher met this requirement.

RESISTIVE ILLUMINATION CONTROL

APS alleges that Nutel's test results fail to establish that the Nutel flasher complies with the specification requirement for resistive illumination control. The technical specification, at paragraph 3.10, requires that the flasher be controlled by a photoresistor, which will turn the flasher on at night and off during the day. The test specification, at paragraph 4.4.7, involves verifying that the photoresistor turns the flasher on and off and that the flashing light does not itself cause irregular operation of the illumination control circuitry. It also requires measurement of the "turn on" and "turn off" resistances and verification that these resistances are within the limits set forth in paragraph 3.10.1.

APS asserts that Nutel's test was incomplete because its test plan lacks any reference to one of the requirements of paragraph 3.10.1, namely, that the illumination circuitry "shall bias the photoresistor no more than 6 volts such that the photoresistor dissipates no more than 40mw." APS' argument is without merit, as the test specification did not require testing or measurement of the bias. The test specification referred to the requirements of paragraph 3.10.1 only with respect to the "turn on" and "turn off" resistances; Nutel's test plan addressed this requirement and its test results showed compliance. Moreover, as was the case with the lamp-out sensor requirement discussed above, APS' test was very similar to Nutel's in this regard: APS' test plan did not reference the bias requirement, nor did its test results record any measurement of the bias. We therefore find nothing improper in the agency's acceptance of Nutel's test results showing compliance with the resistive illumination control requirement.

OTHER REQUIREMENTS

APS asserts that Nutel's testing could not have established compliance with the Coast Guard's requirements because Nutel's test plan omitted certain items, such as a list of measuring equipment and details regarding the environmental tests. The agency concedes that Nutel's test plan did not list the equipment for measuring the physical dimensions of the flashers, and that it did not provide details concerning how the environmental testing would be conducted beyond the specification's stated requirements. The agency notes, however, that APS' test plan also omitted any list of measuring equipment and also parroted the specification in setting forth the environmental test procedures. The agency considered the omissions minor, and accepted both test plans. Since both offerors clearly were treated equally in the acceptance of their test plans, we conclude that Nutel's omissions do not affect the acceptability of its test results.

CONCLUSION

While we have not addressed all of APS' allegations, we have discussed all of those where it appeared that the agency waived a stated testing requirement in favor of Nutel; in each case, we have concluded either that the Nutel flasher meets the specifications, or that any waiver of the specifications was applied equally to APS. As to APS' remaining allegations, we have reviewed the record and conclude that the test results establish Nutel's compliance with the qualification requirements. For example, APS asserts that Nutel's test report does not show that a 15 ohm resistor was in place as required for a temperature conditioning test. However, the SPA employee who witnessed and recorded the results of all of the Coast Guard tests has stated in an affidavit that the resistor was in place. While APS argues that this post facto explanation of the test proves that Nutel's test report was deficient, it does not establish that the agency failed to test Nutel's item in accordance with the specification. We conclude that the Coast Guard properly included Nutel on the QPL for solid state flashers.

The protest is denied.

for James F. Hinchman
General Counsel