

DECISION



17241
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195820.2

DATE: March 5, 1981

MATTER OF: Utah Foam Products, Inc.--
[Request for Reconsideration]

DIGEST:

Protest ground not considered in prior decision, that specification excluding urethane foam insulation from roofing project, except for urethane composite board, is unduly restrictive, is without merit and prior decision is affirmed where agency makes prima facie showing that specification is reasonably related to its needs and protester does not prove otherwise.

Utah Foam Products, Inc. (Utah) a supplier of spray-applied urethane foam insulation (SUF), requests reconsideration of our decision, Utah Foam Products, Inc., B-195820, April 3, 1980, 80-1 CPD 249, which denied the firm's protest. The protest concerned the alleged restrictiveness of the Army Corps of Engineers' interpretation and implementation of its construction guide specification to exclude the use of Utah's product in the repair, insulation and reroofing of six warehouses at the Defense Depot, Ogden, Utah. The guide specification provides that, except for composite board, insulation urethane is not permitted on a steel roof deck, which is the type of deck present in four of the six buildings. We affirm our prior decision.

Our prior decision never reached the restrictiveness issue because we found that Utah was unwilling to comply with other specification requirements which we believed were included in the specification as a result of the Corps' reasonable exercise of its technical judgment of the project's total requirements. For example, specification No. 5566 required the removal of all layers of the existing bituminous, or "built-up," roof system (BURS)

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above the roof decks, inspection of all of the decking, repair of damaged or deteriorated portions of the deck and installation of a new BURS. We understood Utah's position to be that by applying SUF to the existing thermal barrier (the old BURS) Utah could satisfy the safety requirements of the guide specification and meet the Government's minimum needs at a considerable savings.

Regardless of how the Corps construed the guide specification as related to the use of SUF, the primary obstacle to this approach was the IFB requirement that the existing BURS layers be removed down to the decks to permit inspection and repairs as needed prior to the installation of new roofs. Therefore, we considered the "thrust" of Utah's protest as questioning the reasonableness of that requirement. We refused to question the technical judgment of the Corps that complete BURS removal was necessary to determine the full extent of deterioration in the decks, since Utah failed to demonstrate that the Corps' judgment was unreasonable.

Arguing that we seriously misinterpreted the thrust of its protest, Utah now submits that while it was concerned that removing the existing BURS was a waste of the taxpayers' money, it is and was willing to tear up the existing BURS and construct a new two-inch thick tongue-in-groove (T&G) wood thermal barrier over which SUF may be applied. Therefore, Utah contends, this Office should have ruled on whether the use of SUF over thermal barriers, new or old, will meet the Government's minimum needs.

Although Utah in its protest submissions never offered to comply with the BURS removal requirement, while taking great exception to it, it did object to the Corps' refusal to permit the application of SUF over a thermal barrier. Since Utah may have intended this as an independent ground of protest, we will consider the issue now.

An agency must draw its specifications to state only the actual minimum needs of the Government and to describe the required services or supplies in a manner which will encourage competition to the maximum practicable extent consistent with those needs. Defense Acquisition Regulation (DAR) § 1-1201 (1976 ed.). Therefore, when a protester challenges a specification as being unduly restrictive of competition, we generally require the procuring agency to establish that restrictions

imposed by the specification are reasonably related to its needs. The protester still bears the burden of proving that the restrictions are unreasonable. We take this view because the contracting agency is primarily responsible for determining the needs of the Government and the method of fulfilling such needs, and because we recognize that the agency's procurement officials generally are in the best position to know the Government's actual needs and, consequently, to draft appropriate specifications. Oshkosh Truck Corporation, B-198521, July 24, 1980, 80-2 CPD 161.

Because the Corps understood Utah's original protest to be against its refusal to allow the application of SUF over any part of the existing BURS or its refusal to allow SUF's application to the bare roof decks after the existing BURS' removal, the Corps never addressed whether its minimum needs could be met by removing the existing BURS, constructing a two-inch T&G wood thermal barrier and applying SUF over the wood. Therefore, we specifically requested the Corps to address this matter in a supplemental report.

The supplemental report states that SUF is combustible, emits highly toxic smoke and fumes when ignited, and poses a hazard of rapidly spreading flame and smoke. Therefore, it is not suitable for direct application to combustible or highly conductive materials. Presumably, the Corps is suggesting that a two-inch T&G wood barrier would be combustible, and therefore the specification excluding the application of SUF to such a barrier was reasonably related to the Army's minimum safety requirements.

Utah responds to the Corps' safety argument with evidence that the Navy and independent laboratories have tested urethane foam roofing systems and found foam to be a safe roofing material if a proper grade of foam is used, the foam is applied over a proper thermal barrier, and a proper protective coating is applied over the foam. Such evidence includes testimony from Dr. Robert Allenbaugh of the Navy Civil Engineering Laboratory at Port Hueneme, California, and the Manager, Materials Section of Factory Mutual Research Corporation (FM).

In addition, Utah points out that the Department of Defense's (DOD) construction guide specification permits the installation of any type of insulation under either of the following roofing conditions:

"(1) * * * above poured-concrete or poured-gypsum roof decks, nominal 2 inch thick T&G

wood plank roof decks, or precast deck panels or planks which are Factory Mutual approved as noncombustible roof deck construction.

"(2) * * * above roof decks where the entire roof construction assembly, including the insulation, is Underwriters' Laboratories listed as Fire Acceptable or Factory Mutual approved for Class 1 roof deck construction."

While these sources stand for the general proposition that SUF insulation can be safely applied to a proper thermal barrier, they do not establish that Utah's proposed construction of a two-inch thick T&G wood barrier and application of SUF over the T&G wood has been tested and approved by any source. The Manager, FM informed us that two-inch T&G would, when properly treated, serve as an excellent insulator, but an assembly of SUF over a two-inch T&G wood barrier on top of a metal roof deck has not been tested by FM. The Manager opined that such an assembly should be comparable to the types of insulation already permitted by the DOD guide specification and to roof assemblies approved by FM for Class 1 roof deck construction.

Since Utah's proposed application of SUF over a two-inch T&G wood barrier constructed on a metal roof deck has not been approved by FM, we do not believe Utah has carried its burden of proving that the Corps' specification was unreasonable. We suggest that Utah seek FM's or Underwriters Laboratories' approval of such a roof assembly, and if successful, document the approval for the Corps. We believe the Corps, after a thorough investigation of the assembly's safety and reliability, would then be responsible to determine whether the proposed application of SUF will satisfy the agency's needs in the future, and whether its guide specification should be revised. See Oshkosh Truck Corporation, supra.

Milton J. Arnold

Acting Comptroller General
of the United States