



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Avon Inflatables

File: B-270893

Date: May 9, 1996

James H. Falk, Sr., Esq., John M. Falk, Esq., and Robert K. Tompkins, Esq., The Falk Law Firm, for the protester.

Lucia E. Casale, Esq., Klimek, Kolodney & Casale, P.C., for Zodiac of North America, an intervenor.

Richard P. Castiglia, Jr., Esq., and Martin F. McAlwee, Esq., Department of the Air Force, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against rejection of quotation of an "equal" boat under brand name or equal solicitation for inflatable rescue boats is denied where protester fails to establish that quoted boat's deviation from solicitation's salient characteristics was a minor deviation that did not affect the ability of the nonconforming product to meet the agency's actual functional needs.

DECISION

Avon Inflatables protests the award of a contract to Zodiac of North America under request for quotations (RFQ) No. F08650-95-R-A253, issued by the Department of the Air Force on a brand name or equal basis for inflatable rescue boats for use in the astronaut recovery program. Avon argues that the Air Force improperly rejected its low-priced quotation based on immaterial deviations from the stated salient characteristics.

We deny the protest.

As amended, the RFQ requested quotations to furnish six Zodiac model No. F47OU inflatable rescue boats, or equal. The RFP listed 14 salient characteristics that the boats must meet and required quoters to submit descriptive literature with their quotations.

Avon's quotation was rejected as unacceptable on the basis that the proposed Avon rescue boat failed to comply with five of the listed salient characteristics, including

the requirement that the transom at the rear of the boat be 40 millimeter (mm) thick marine-grade plywood; Avon specified only a 32-mm thick transom.

Avon primarily argues that its boat was an equal product which met the essential needs of the agency and the functional, if not the precise, requirements, of the salient characteristics.

Agencies should waive minor deviations from a brand name or equal solicitation's salient characteristics where the deviation does not affect the ability of the nonconforming product to meet the agency's actual functional needs, and no other firm is prejudiced by the waiver. Astrophysics Research Corp., 66 Comp. Gen. 211 (1987), 87-1 CPD ¶ 65; General Projection Sys., Inc., B-241418.3, Dec. 27, 1991, 91-2 CPD ¶ 582; see also Defense Federal Acquisition Regulation Supplement § 210.004(b)(3)(B)(2) (agency should "not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use").

The Avon rescue boat deviated materially from the agency's actual needs, at least as to the transom thickness requirement. The transom, a plywood board at the stern of the boat which closes the "U" created by the inflated flotation compartments, keeps out the sea and serves as a base for mounting the engine(s). The Air Force reports that:

"a failure of the transom based upon the lack of sufficient strength would have catastrophic consequences to the success of a rescue mission and may result in the loss of life. Past experience has revealed that a 40 mm transom is thick enough to withstand the operational demands of missions which involve the full panoply of crew, passengers and equipment. We have grave doubts that a transom which is only 32 mm thick can withstand the same operational demands. The 25 percent thicker, stronger Zodiac transom allows the use of higher horsepower outboard engines or twin engines in conjunction with a four-piece full floorboard in high seas at maximum speed over a longer period of time."

Avon does not dispute that its 32-mm transom is not as strong as the 25-percent thicker, stronger 40-mm transom the salient characteristics specified. Rather, Avon notes that the Air Force using activity has stated that the transom must support a "35 or larger horsepower engine"; Avon claims that the transom on its boat can support a 40-horsepower engine and that there thus is no functional difference between the transoms.

Avon's focus on engine size ignores the true importance of the transom thickness requirement. The requirement for a 40-mm transom embodied the Air Force's determination, based on a history of successful use of the 40-mm transom, that it needs the greater margin of safety and operational flexibility afforded by the thicker, stronger transom in order to reduce risk in potentially dangerous applications. Avon has offered no evidence that the strength of, and thus the margin of safety and operational flexibility provided by, its 32-mm transom is substantially equivalent to that of the thicker, stronger 40-mm transom specified in the RFQ. In the absence of such a showing, there simply is no basis to conclude that Avon's 32-mm transom is materially equivalent to the required 40-mm transom. We therefore conclude that Avon's quotation was properly determined to be unacceptable. See generally Innovative Refrigeration Concepts, B-253983, Oct. 26, 1993, 93-2 CPD ¶ 260.

The protest is denied.

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