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DECISION

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

FILE: B-213060.2 **DATE:** July 23, 1984

MATTER OF: Polymembrane Systems, Incorporated--Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where protester has not shown any errors of law or fact which warrant reversal of the decision.

Polymembrane Systems, Incorporated (PMS), requests reconsideration of our decision in Polymembrane Systems, Incorporated, B-213060, Mar. 27, 1984, 84-1 C.P.D. ¶ 354, in which we denied its protest. PMS had protested that invitation for bids (IFB) No. N62474-83-B-2106, issued by the Naval Facilities Engineering Command (NFEC) for the installation of single-ply roofing membrane, limited the materials to be used to one generic category of roofing membrane, ethylene propylene diene terpolymer (EPDM), excluding its product Sucoflex which contained another type of membrane, polyvinyl chloride (PVC). Therefore, PMS contended the IFB was unduly restrictive of competition. We held that the contracting agency, which we recognized is primarily responsible for determining its minimum needs, had made a prima facie showing that the protested specifications were reasonably related to its needs, to prevent roof leakage, and that PMS had not carried its burden of affirmatively proving its case.

Essentially, PMS contends that we erred in concluding that NFEC established a prima facie case that the restriction was reasonably related to its needs and, in the alternative, that even if a prima facie case is assumed, we erred in concluding that PMS had not shown that NFEC's restriction was unreasonable.

PMS specifically contends that GAO gave undue consideration to the statements of one of NFEC's technical experts which showed that PVC was inadequate for NFEC's needs. PMS also argues that the NFEC expert did not conduct specific testing on Sucoflex and, therefore, his opinion

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cannot be relied on. Further, PMS has submitted results of tests conducted in Canada which show that PVC and Sucoflex are successfully being used in Canada and the United States. PMS states that the evidence it submitted clearly refutes the evidence submitted by NFEC and shows that NFEC did not have a reasonable basis for limiting the subject procurement to EPDM roofing membrane.

It is true that NFEC relied principally on one expert in determining to restrict this procurement to the EPDM membrane. This person is a research chemist with a Ph.D. in chemistry and has been employed by the Navy for 30 years. To counter his position on the qualities of EPDM, PMS relies principally on the opinions of the president of PMS and an employee of PMS who "doesn't profess to be an expert . . . but has a better than layman knowledge of EPDM." Further, PMS has referenced certain reports and/or tests concerning EPDM which relate primarily to characteristics of EPDM that are not in issue here (shrinkage and embrittlement).

With regard to the acceptability of Sucoflex for NFEC's needs, PMS also points to the opinions of its president and employee, certain tests and the fact that Sucoflex has been used on many buildings. As stated in our prior decision, the NFEC technical expert does not share PMS's view concerning Sucoflex based upon his knowledge of the general properties of PVC, personal observation and the lack of any convincing test data to prove that PMS has solved the shrinkage and embrittlement problems inherent in PVC. As pointed out in the earlier decision, the primary test relied upon by PMS to counter NFEC's position on shrinkage and embrittlement of Sucoflex was not considered sufficient by NFEC to establish that these problems had been solved because the time and temperature factors under which the tests were conducted were not considered sufficient. While PMS reiterates its position that the testing was sufficient and refers to other testing to prove its case, we do not think this invalidates the contrary opinion of the agency's qualified expert.

In sum, PMS is basically disputing the technical position of NFEC. We have consistently held that in technical disputes, a protester's disagreement with the agency's opinion, even where the protester's position is supported by expert technical advice, does not invalidate the agency's opinion. Carolina Concrete Pipe Company, B-192361, Mar. 4, 1981, 81-1, C.P.D. ¶ 162.

PMS has not provided any evidence of factual or legal errors in the decision which warrant reversal of our prior decision. 4 C.F.R. § 21.9(a) (1983); Association of Soil and Foundation Engineers--Reconsideration, B-200999.2, May 11, 1981, 81-1 C.P.D. ¶ 367.

The prior decision is affirmed.

for Shelton J. Dorolan
Comptroller General
of the United States