

**DECISION**

23836  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-207964**DATE:** January 4, 1983**MATTER OF:** Dunlin Corporation**DIGEST:**

Agency's acceptance of bid for window assemblies which was based on other than sealant specified by solicitation was proper since bid satisfied agency's needs and no other bidder was prejudiced thereby. Bare statement by second low bidder, which had only supply of specified sealant, that it would have submitted a lower bid if other sealants had been permitted does not indicate prejudice since bid already was on the low side and bidder offered no support for its statement.

The Dunlin Corporation protests award of a contract to Alton Iron Works under invitation for bids (IFB) No. N00383-81-B-0596 which was issued by the Aviation Supply Office, Department of the Navy. The IFB called for bids on helicopter window observation assemblies and specified the use of a sealant which, unknown to the Navy, was no longer in production. Subsequent to bid opening, Dunlin, the second low bidder, advised the Navy that it had the only supply available of that sealant. The Navy then verified that the sealant was otherwise unavailable, authorized Alton, the low bidder, to use an alternative sealant, and made the award. Dunlin contends it was improper for the Navy to permit Alton to use other than the specified sealant without giving all bidders an opportunity to bid on the same basis. We deny this protest.

The Navy contends that no bidder was prejudiced by its actions and that had it canceled the invitation and resolicited on the basis of specifications identifying the equivalent alternative sealant, it would have engendered an auction. The Navy's conclusion that Dunlin was not prejudiced is based on the disparity between the Alton and Dunlin bids. The Alton unit price was \$18.10;

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Dunlin's price was \$24.80. Four other bids ranged from \$32.50 to \$41.55. The Navy estimates that an assembly using the substitute sealant would cost about 7 cents less than one using the specified sealant and that it would have been impossible for Dunlin to have lowered its price to have been competitive even if it had the opportunity to bid to the changed specifications.

Dunlin states, however, that its bid price reflected its belief that it had an advantage resulting from its possession of all the specified sealant available. Dunlin contends its price would have been considerably lower if the competition had been based on a readily available sealant rather than on one only it had.

The Navy correctly states that the use of defective specifications--such as those used here, which by specifying the particular sealant, overstated the Navy's needs and unduly restricted competition--does not itself provide a legally compelling reason to reject bids, cancel the solicitation, and resolicit. As we have often said, if the acceptance of a bid will satisfy the Government's needs and no bidder will thereby be prejudiced, award should be made notwithstanding the deficiency in the specifications. See, e.g., GAF Corp., et al., 53 Comp. Gen. 586 (1974), 74-1 CPD 68.

We agree with the Navy's actions here. Its basic needs obviously could be met by acceptance of the Alton bid. It also could reasonably view acceptance of the Alton bid based on a sealant comparable to that specified in the IFB as not prejudicial to Dunlin given the value of the sealant and the difference in the Alton and Dunlin bid prices. While Dunlin states that it would have bid considerably lower had it appreciated that it faced meaningful competition, we do not believe that self-serving statement, without more, indicates the reasonable possibility of prejudice. In fact, in light of Dunlin's bid at the lower end of the bid range, we find it difficult to conclude on this record that Dunlin's bid reflects an intention to exploit what it saw as its apparent sole-source situation and that the bid would have been significantly lower if the specifications permitted use of other than the named sealant.

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Therefore, we find the Navy's decision to accept the Alton bid proper. The protest is denied.

*for* *Milton J. Fowler*  
Comptroller General  
of the United States