

DECISION



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

26944

FILE: B-212673

DATE: December 5, 1983

MATTER OF: Aldan Rubber Co.

DIGEST:

1. A bid sample requested and furnished after bid opening may not be used to determine bid responsiveness.
2. Question of small business' responsibility must be referred to Small Business Administration for consideration of issuing certificate of competency.

Aldan Rubber Co. (Aldan) protests the award of a contract to Duracotte Corporation under solicitation No. 3PI-30139 issued by UNICOR, Federal Prison Industries, Inc., Leavenworth, Kansas, for aluminum-coated, flange material for mattresses.

Aldan submitted the lowest responsive bid. The contracting officer, however, requested that a sample of the material to be provided by Aldan be submitted for evaluation. The contracting officer performed a flammability test and found that the material submitted by Aldan was flammable. The contracting officer concluded that the material was substantially different from that specified in the solicitation and, as a result, Aldan's bid was rejected.

We sustain the protest.

Section 1-2.202-4 of the Federal Procurement Regulations (FPR) (1964 ed. amend. 10) sets forth the regulations concerning the use of bid samples. Where required by the solicitation, a bid sample must be furnished as part of the bid and must be received before the time set for opening of bids. In the present case, however, the sample furnished by Aldan was not required by the solicitation, but rather was requested and submitted after bid opening. Aldan's bid took no exception to the solicitation requirements and it is a fundamental rule of formal advertising that the responsiveness of a bid must be determined based on the bid submission itself and not on the basis of post-bid-opening submissions. To require a

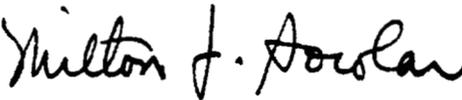
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bidder to submit a bid sample after bids are opened is tantamount to requiring the submission of another bid after all the bids are opened. Accordingly, UNICOR could not properly determine the responsiveness of Aldan's bid based on a bid sample submitted after bid opening. Zarn, Inc., B-204702, July 29, 1982, 82-2 CPD 93.

To the extent UNICOR determined Aldan nonresponsible, we note that Aldan is a small business concern and its offer could not properly be rejected without referral of the issue to the Small Business Administration (SBA). See 15 U.S.C. § 637(b)(7) (1982); Skyline Credit Corporation, B-209193, March 15, 1983, 83-1 CPD 257. Consequently, if Aldan was determined nonresponsible, the matter should have been referred to the SBA for consideration in connection with its certificate of competency procedures.

Accordingly, we find that the agency's rejection of Aldan's bid was improper. Since the contract has been completed, however, no remedial relief is available in this case.

The protest is sustained.

for 
Comptroller General
of the United States