



DIGEST - L-Cont
 COMPTROLLER GENERAL OF THE UNITED STATES
 WASHINGTON, D.C. 20548

B-176262

JAN 23 1973

Lutz Superdyne, Inc.
 64 - 70th Street
 Outtenberg, New Jersey 07093

Attention: Mr. Oscar O. Epstein
 President

Gentlemen:

B-176262
 Reference is made to your letter of December 7, 1972, commenting on our decision of December 4, 1972, which upheld the contracting officer's determination to reject your bid as nonresponsive because it failed to meet the sample requirements of General Services Administration (GSA) invitation for bids (IFB) FPNTF-A2-19262, and to make award to another bidder at a higher price.

You suggest that our Office submit your samples to a commercial laboratory to determine if the GSA basis for rejection is correct and if there has been a tampering with the samples. In that regard, you state that you have been supplying items to GSA since the protest and they have been determined to be perfect.

It is not the practice of our Office to submit to independent testing laboratories the samples furnished by bidders to determine whether the agency basis for rejection is correct. Other than your bare suggestion that the agency may have acted improperly, you have furnished no evidence that establishes that is probable. The fact that subsequent items, not the samples upon which the rejection was based, may have been found to be satisfactory is no indication that the samples were acceptable.

Further, while you contend that the specification paragraph providing for rejection of samples for "other defects" is used as a means of rejecting products of bidders that the agency does not like to do business with, it appears from the record that your product was rejected for the reason that all surfaces of the product had not been ground. As indicated in the December 4 decision, that was a proper basis for rejection.

This point

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Finally, you disagree with the procurement activity as to whether the prices ultimately paid for the items were reasonable. In view of the contracting activity's broad discretion in such matters and the price differences involved, we have no legal objection to the administrative action.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States