

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



B-176628

JAN 24 1973

Marty's Floor Covering Company, Inc.
906 Duke Street
P. O. Box 1206
Alexandria, Virginia 22313

Attention: Mr. Martin L. Adem
President

Gentlemen:

This is in further reference to your letter dated July 31, 1972, and subsequent correspondence, in which you protest the award of a contract under solicitation No. FPNR-C3-44717-A-6-7-72, issued by the Federal Supply Service of the General Services Administration for carpeting in the New Library Building, United States Naval Academy, Annapolis, Maryland.

Although your protest was filed before award of a contract, award was made to Shields Associates-Interiors on August 4, 1972, notwithstanding your protest, in accordance with the requirements of Federal Procurement Regulations (FPR) 1-2.407-8. ✓

The solicitation in question was issued on May 15, 1972. Due to a discrepancy between the Government control samples and the Technical Description, an amendment to the solicitation clarifying the Government's requirements was issued, and the time for bid opening was extended from June 7, 1972, to June 15, 1972, so as to allow offerors adequate time to prepare their bid samples.

It is your contention that the bid document was defective because the portion of the bid specification entitled "Technical Description" did not clearly delineate or differentiate between the face weight and total weight of the carpet; that the Technical Description was confusing in that it failed to set forth table, class or type of carpet from the Federal Specification DDD-C-95; and that the Technical Description did not provide for a flame spread rating requirement in accordance with Maryland law.

In connection with your allegation that the specifications concerning the face weight/total weight requirement of the carpet was confusing, you telephoned the procurement agent, Ann Whitcomb, on June 14, 1972, the day

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before bid opening, for clarification of the pile weight requirement. Upon being informed that the Technical Description required a carpet with a 50-ounce pile weight, you requested an amendment to the solicitation to clarify that point. After consultation with previous suppliers of the type of carpet in question, the Federal Supply Service denied this request.

The specification in question reads as follows:

"Weight, oz./sq. yd.:

File 50
Total (including backcoating)"

You maintain that this description could be and was interpreted to mean that the total weight of the carpet, including backing, was to weigh 50 ounces. You allege that other manufacturers interpreted the specifications as you did, and that the successful low bidder changed its supplier because the original supplier had quoted a price for a 42-ounce pile weight exclusive of backing, thinking that a total carpet weight of 50 ounces was required.

However, it was the opinion of the contracting agency that a reasonable and fair reading of the Technical Description did not result in the confusion set forth in your protest; and that the specifications clearly meant that the carpet pile exclusive of backcoating was to weigh 50 ounces. GSA states that the total weight was not shown so that the Technical Description would not be restrictive.

Before denying your request to amend the solicitation to clarify the pile weight/total weight requirement, the contracting agency contacted previous suppliers of the type of carpet in question and solicited their views with respect to the adequacy of the Technical Description. As a result of these conversations, FSS determined that there was nothing to cause confusion in the mind of anyone familiar with products of the carpet industry.

Additionally, the contracting agency determined that no potential supplier other than you had made any formal complaint concerning the Technical Description in question. Furthermore, despite your allegation to the contrary, the contracting agency determined that the successful low bidder and his carpet supplier, Roxbury Carpet Company, understood the Technical Description. Further, while it is true that the carpet supplier

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was changed from Roxbury to J. P. Stevens, it is reported that the change was made at no increase in contract price because Roxbury was unable to meet the installation date requirement and not, as you contend, because their quoted price was based on an erroneous interpretation of the Technical Description.

Although it is possible that some confusion may have resulted from the portion of the Technical Description in question, and perhaps consideration should be given to making it more clear, since you were informed as to its meaning, and there is no evidence of record that any other bidder was confused by the requirements, we do not understand how you can allege that such description was unclear or ambiguous. Even if the specifications were confusing to you, we are unable to find that you were prejudiced since your bid, which you stated to CSA personnel was formulated by averaging supplier quotes submitted to you for both the required 50 ounce pile weight and a 42 ounce pile weight, was only the sixth lowest out of seven bids--all other bids apparently having been submitted on the basis of the more expensive 50 ounce pile weight.

In regard to your contentions that the Technical Description was confusing since it failed to set forth table, class or type of carpet from Federal Specification DDD-C-95, and that the specifications did not contain the Maryland Fire Code requirements, we consider the contracting agency's explanation of the merits of these contentions, which you have received, to be sufficient. Furthermore, we conclude that these points are not for consideration inasmuch as they were not timely raised.

In this regard, neither you nor any other bidder raised any question concerning these matters prior to submission of bids, although paragraph 3 of the IFB entitled "Solicitation Instructions and Conditions" provided a method whereby bidders could request explanation or interpretation of any provision of the IFB. We believe it would have been more appropriate for your firm to have raised any question concerning the IFB with the contracting agency prior to submitting a bid. In this connection, we held in B-172082, September 2, 1971, that:

"* * * it is the position of our Office that protests against the specifications and conditions of an IFB must be filed prior to the opening of bids. A bidder who participates in a procurement,

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without objection, through the point of bid opening must be deemed to have acquiesced in the terms and conditions as set out in the invitation. 50 Comp. Gen. 193 (1970). * * * We therefore consider that your protest, after award * * * is untimely."

See also B-173879, October 1, 1971.

In view of the foregoing, we must deny your protest.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States