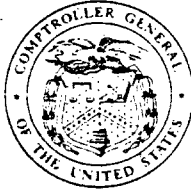


DECISION



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

FILE: B-185397

DATE: May 12, 1976

MATTER OF: Vanguard Pacific, Inc.

60865
98957

DIGEST:

Bidder offering extension lights with neoprene rubber handles in lieu of plastic handles called for by specifications was not justified in requiring contracting officer to determine that neoprene handles were equal or superior to plastic handles. Since agency's technical personnel advised contracting officer that neoprene handles were not acceptable, contracting officer reasonably concluded that bid should be rejected.

Vanguard Pacific, Inc. (VPI) has protested the rejection of its bid and the award to Ericson Manufacturing Company (EMC) under invitation for bids (IFB) No. DSA400-76-B-0761, issued by the Defense Supply Agency (DSA), Defense General Supply Center, Richmond, Virginia, on August 15, 1975.

The IFB, a small business set-aside, was for the procurement of extension lights. The specifications cited in the IFB stated that the handle "shall be made of a suitable plastic that is resistant to impact, abrasion, heat, and oil." Bids were opened on September 11, 1975, and VPI's bid was low. However, VPI's bid was accompanied by a letter, dated September 5, 1975, which stated:

"Item bid meets and exceeds requirements of Federal Specification W-L-661B in that handle used is neoprene rubber, heavy duty, in place of hollow shell plastic P.V.C."

Based upon VPI's statement that it would furnish handles made of neoprene rubber rather than plastic, the contracting officer rejected the bid. Award was made to the second low bidder, EMC, on November 7, 1975.

In its letter of protest, VPI contends that it was under no obligation to obtain the contracting officer's approval to provide a product allegedly superior to that required by the specifications. VPI states that it was capable of providing plastic handles but that it attempted to upgrade the product furnished at no additional cost

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to the Government. Moreover, VPI contends that EMC, the awardee, proposes to furnish rubber compound handles of a formulation similar to that offered by VPI, but since EMC did not advise the contracting officer of that fact as did VPI, EMC's bid was not determined to be nonresponsive.

It is a fundamental rule of advertised bidding that any bid which does not conform to the essential requirements of the invitation shall be rejected. ASPR 2-404.2(a) and (b) (1975 ed.). In this connection, paragraph 2(d) of Standard Form 33A, a part of the subject IFB, provided that "offers for supplies or services other than those specified will not be considered unless authorized by the solicitation."

Here the specifications did not authorize offers or bids based on neoprene rubber in lieu of plastic handles. While VPI stated in its bid that its handle "meets and exceeds" the specification requirements, technical personnel at the Defense General Supply Center were of the opinion that neoprene handles did not conform to the requirements of Federal Specification W-L-661B. In addition to the fact that neoprene is not defined as a plastic material it was their understanding that the specification preparing activity at Port Hueneme, California had specifically precluded the use of neoprene because neoprene rubber lacked the impact resistance to prevent damage to electrical parts inside the handles.

VPI strongly disputes DSA's technical judgment in this respect. It has submitted a report from a testing company in order to show that neoprene rubber compounds have excellent impact resistance. Furthermore, it states that the staff at Port Hueneme had developed the restrictive specification in order to preclude the use of wooden handles, not neoprene, and that a future revision of the specification will specifically allow the use of neoprene handles.

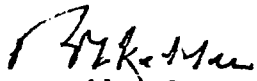
It may be, as the protester contends, that neoprene handles are sufficiently resistant to impact to meet the requirements of the specification. However, VPI was not justified in relying upon the contracting officer to reach the same conclusion without benefit of a test report or other data to establish that neoprene was acceptable. In this regard, ASPR 2-404.2(d)(v) provides that bids shall be rejected where the bidder requires the Government to determine that the bidder's product meets the Government's specifications. In the circumstances, we believe the contracting officer reasonably concluded, based on the advice of his technical personnel, that neoprene handles were not acceptable. B-169547, September 17, 1970; B-146583, October 5, 1961.

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Furthermore, VPI's contention that a more experienced contracting officer would have inquired as to VPI's ability to provide the required plastic handles is without merit. The contracting officer was under no obligation to inquire as to whether VPI could produce plastic handles and could not properly have considered such information had he, in fact, made such inquiry of VPI, because reliance upon information supplied by a bidder after bid opening is not permissible, as such a practice would allow the bidder an opportunity to change its bid. 52 Comp. Gen. 604 (1973); Fisher - Klosterman, Inc., B-185106, March 9, 1976. Finally, no evidence has been presented to show that EMC intends to furnish neoprene type handles, as alleged by VPI.

Based on the foregoing, we find no reason to question the actions of the contracting officer.

In view of our conclusion, we need not consider DSA's contention that VPI's bid also was nonresponsive to the small business clauses of the IFB. Accordingly, the protest is denied.


Deputy Comptroller General
of the United States