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MARC BOMAN
P.L.# 2

DECISION



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

FILE: B-187568

DATE: December 23, 1976

MATTER OF: J. Arlie Bryant, Inc.

DIGEST:

1. Where protester offered to crush rock from source other than source designated in solicitation for pit development and crushing, protester's bid contained no obligation to perform in accordance with invitation for bids and was therefore properly rejected as nonresponsive.
2. Solicitation provision permitting late modification of otherwise successful bid which is more favorable to Government cannot reasonably be construed to permit changes after bid opening to make otherwise unacceptable bid eligible for award. Bid must be rejected as nonresponsive if it fails to conform to solicitation specifications.

J. Arlie Bryant, Inc. protests the rejection of its bid as nonresponsive to invitation for bids No. 3-00-17, issued by the U.S. Department of Agriculture, Gifford Pinchot National Forest.

The purpose of this procurement was "To secure crushing, delivery and stockpiling of approximately 8,700 cubic yards of crushed aggregate base." The protester's bid was rejected as non-responsive because of the following qualification in a letter attached to its bid:

"Contractor's bid is based on using Pit #3670 not the designated source as source of material as contractor will be crushing from that source for Widgeon Timber Sale. Contractor will assume all additional haul costs."

In describing the project's location, however, the solicitation specified the source from which the crushed rock would be extracted and it required the development of a pit in accordance with a specified plan for the particular location designated as the source for the aggregate base. The specifications also stated:

B-187508

"The Government assumes responsibility for the quality and quantity of material in the designated source. Should the designated source, due to causes beyond the control of the Contractor, contain insufficient acceptable material, the Government will provide another source with an equitable adjustment in accordance with the General provision, Form 6300-48."

In a letter dated September 23, 1976, the contracting officer wrote the protester:

"Your offer of \$105,270.00 on subject solicitation was the sole offer received. Offer, however, must be rejected as nonresponsive due to enclosure of qualifying letter conditioning offer on use of other than the specified pit source. Solicitation made no provision for other than the directed source for rock."

The contracting officer has reported that acceptance of the bid, as qualified, would have been inconsistent with the interests of contractors who would have bid if a non-directed material source was permitted by the solicitation. The report indicated that the agency expects to readvertise for this requirement at some future time.

The protester argues that it was misled by a conversation with the contracting officer prior to bid opening because the firm was not advised that a qualification concerning the location of the materials source would render the bid nonresponsive. In addition, the protester now agrees to perform the work in the designated location and would apply the provision in the solicitation permitting consideration of a late modification of an otherwise successful bid which makes its terms more favorable to the Government.

We find no merit to these arguments. The solicitation requirement for developing a specific pit is unequivocal and the contracting officer did not advise to the contrary. Moreover, the solicitation expressly states that offers for supplies or services other than those specified would not be considered

B-187568

unless authorized by the solicitation and that award would be made only on the basis of a conforming bid. See Standard Form 33A, March 1969, Solicitation Instructions and Conditions, paragraphs 2(d) and 10. Although a late bid modification which makes an otherwise successful bid more favorable to the Government may be accepted, this provision cannot reasonably be construed as permitting changes after bid opening to make an otherwise unacceptable bid eligible for award. Cf. 40 Comp. Gen. 432 (1961). It is axiomatic that in formally advertised procurements a bid must be rejected as nonresponsive if it fails to conform to the specifications of a solicitation. Federal Procurement Regulations § 1-2.404-2(a) (1954 ed. amendment 121).

Accordingly, the protest is denied.

R. F. Koffler
Deputy Comptroller General
of the United States