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

B-176628

April 30, 1973

Carpet and Draperies Contract Company, Inc.
3215 Rhode Island Avenue
Mt. Rainier, Maryland 20822

Attention: Mr. Richard Gartner
President

Gentlemen:

This is in reference to your letter dated January 27, 1973, written in response to our decision, B-176628, January 24, 1973, in which we denied your protest against the award of a contract to any other firm for carpeting of the New Library Building, United States Naval Academy, Annapolis, Maryland.

The invitation for that procurement required that bid samples in the quantity, sizes, etc., required for the items so indicated in the solicitation be furnished as part of the bid and received by the procuring agency prior to the time set for the opening of bids.

In our decision we stated that we recognized that there was a conflict in the record as to whether there was an attempt by you to submit conforming samples. After a careful review of the evidence presented, we concluded that we should accept the administrative version of the disputed facts.

You have contended that you attempted to submit your bid forms, the architect folder and four 3- by 2 $\frac{1}{2}$ -inch bid samples in the bid opening room. You have contended further that although the bid opening officer finally took the bid forms and architect folders, she refused to accept your four samples. The bid opening officer has reported, however, that she does not recall being offered or having refused to accept the four samples.

In this regard, pertinent provision of the invitation relating to the submission of bid samples informed bidders that:

6. BID SAMPLE REQUIREMENTS:

* * * * *

(c) Sample must be submitted with the original copy of GSA Form 434, Sample Record Sheet

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(copies attached), enclosed and properly executed, and bid sample forwarded to the above address; not to the Bid Room with the offer. (Emphasis supplied.)

It is clear that the instructions contained in paragraph 6, above, were designed to facilitate the receipt of samples. Had you complied with the provisions of that paragraph, we believe that the confusion which resulted in this case might have been avoided. On the basis of the record before us, we are unable to conclude that the contracting officer acted improperly at the bid opening with regard to your samples. Since the record shows that your samples were not actually received by the General Services Administration (GSA) until June 30, 1972, 15 days after bid opening, we must conclude that your bid was properly rejected. See 48 Comp. Gen. 59 (1968); B-172715, July 8, 1971.

You have also raised questions concerning the changes in the manufacturers of the carpet and padding and inquired as to why no new bid was sought as a result of such changes.

As we stated in our original decision, GSA informed this Office that the manufacturer of the carpet was changed in order to guarantee delivery of the product within the time specified. Subsequently, GSA modified the contract to reflect this change.

At the time of the modification of the contract, the successful low bidder was warned that a change in manufacturer did not relieve it of its contractual responsibility to supply a carpet which matched the color and appearance of the approved samples. Region 4, Quality Control of GSA, was notified of the change and requested to inspect the carpet of the new manufacturer so as to insure that it complied with the specifications and the approved samples. GSA reported that all inspections of the carpet were satisfactory. Additionally, as each color arrived at the site, Naval Academy officials matched it with their pieces of the approved color samples, and each color was found to match the approved sample.

In regard to your question concerning "padding substitutes," it is reported that during the installation of the carpet cushion, the Naval Academy questioned the quality of the cushion being laid. The cushion was then tested by the GSA Materials Evaluation and Development Laboratory in accordance with the specifications. The test results revealed that the cushions being installed by Shields Associates did not conform to the requirements of the contract. Accordingly, Shields was ordered to remove the carpet cushion and replace it with the required class 1, firm 1/2-inch thick cushion. The contract was modified to show Allen Industries, Richmond, Virginia, as the subcontractor for carpet

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cushion. Thus, the padding ultimately installed conformed to the requirements contained in the specifications.

The above-mentioned modifications of the contract pertain to contract administration which is primarily a function and responsibility of the contracting agency and is not ordinarily regarded as a matter for resolution under our bid protest procedures pursuant to which we consider the propriety of the award, or proposed award, of a contract. See B-173916, April 20, 1972.

In view of the foregoing, we affirm our decision of January 24, 1973.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

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