



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

D-178765

401 57  
October 31, 1973

Croy Construction Co.  
P.O. Box G  
Bellingham, Washington 98225

Attention: Mr. Wayne T. Sorenson

Gentlemen:

In your letter of August 3, 1973, and prior correspondence, you protested the rejection of your low bid under invitation for bids (IFB) 73-40, issued by the Federal Communications Commission for construction of buildings, roads, and a sewage system at Ferndale, Washington.

Item 2 of Schedule B of the IFB required that the roof of the prefabricated metal building "be guaranteed for 20 years against rupture, structural failure, or perforations under normal atmospheric conditions." Item 1 of Schedule D of the IFB specified that the culvert pipe used to replace existing deteriorated wooden buttressed culverts "shall be concrete reinforced corrugated steel 24" in diameter."

Your bid was determined to be nonresponsive by the contracting officer because it contained two statements:

- (1) "Our bid does not include the culvert pipe as specified in Schedule 'D'. We are substituting a concrete reinforced in lieu of the concrete reinforced steel corrugated pipe."
- (2) "Our building manufacturer (Strom Buildings) will not guarantee the roof for 20 years against rupture or perforations under normal atmospheric conditions and Croy Construction will have to secure some means to meet this guarantee after the bid is accepted."

The statute pertaining to the award of contracts after formal advertising for bids, 41 U.S.C. 253(b), provides that award shall be made to the responsible bidder whose bid conforms to the invitation for bids. Federal Procurement Regulations section 1-2.404-2(a), which implements the statute, provides:

[Protest Against Rejection of Low Bid]

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"Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications \* \* \* shall be rejected as nonresponsive."

The procurement regulations have the force and effect of law. Paul v. United States, 371 U.S. 245, 255. Therefore, if any of the conditions stipulated in your bid made it nonresponsive to the specifications, it was for rejection.

As indicated above, the specifications required the culvert pipe to be concrete reinforced corrugated steel. However, the bid stated that was not being offered and that only concrete reinforced pipe was being offered. Clearly, the bid was offering to provide something less than what the specifications required. It was therefore nonresponsive and properly for rejection. Accordingly, it is academic whether the statement in the bid with respect to the guarantee was a deviation from the specifications requirement.

You have also protested the rejection of the bid on the ground that there was a conflict between the road work provisions in schedules B and D. It is apparent from the record that before the bid opening date you sought clarification of the schedules and that when no action was taken to change the schedules, you bid on the invitation and did not protest the conflict until after you were advised by the contracting officer that the bid was rejected because of the two conditions stated therein.

In that regard, in section 20.2(a) of the Interim Bid Protest Procedures and Standards our Office has provided, "Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals." Accordingly, the protest that there was a conflict between the two schedules was raised untimely and will not be considered.

In view of the foregoing, the protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States