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**DECISION**



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

**FILE:** B-209131

**DATE:** March 22, 1983

**MATTER OF:** Pioneer Industrial Products

**DIGEST:**

1. Bid taking exception to glove wrist width size specification was properly rejected as nonresponsive since wrist width is material aspect of gloves because of the need to ensure the tight fit of the gloves for safety in handling radiologically contaminated material.
2. Fact that agency waived specification requirement on prior procurement does not bar rejection of bid under current procurement. Responsiveness of bid must be determined from bid itself.
3. Possibility that the Government might realize monetary savings if a material deficiency is allowed to be corrected or waived is outweighed by the importance of maintaining the integrity of the competitive bidding system.

Pioneer Industrial Products (Pioneer) protests award to Safety & Supply Co. under invitation for bids (IFB) No. N00221-82-B-0127, issued by the Department of the Navy, Mare Island Naval Shipyard (Navy), for size 10 and size 11, 18-inch radioactive contamination protection rubber gloves. Pioneer's low bid was rejected as nonresponsive to the IFB specifications of a 4-1/2-inch wrist width for size 10 gloves and a wrist width of 5 inches for the size 11 gloves. Pioneer bid a size 10 glove with a 5-inch wrist width and a size 11 glove with a 5-1/4-inch wrist width.

Pioneer concedes that its bid deviated from the wrist specification, but argues that the variance in size is a minor and immaterial informality which should have been waived under Defense Acquisition Regulation (DAR) § 2-405 (Defense Acquisition Circular No. 76-17, September 1, 1978). Pioneer also contends that the Navy improperly determined it a nonresponsible bidder. Since we conclude that Pioneer's bid was nonresponsive, we need not address the issue of Pioneer's alleged nonresponsibility.

We dismiss the protest in part and deny it in part.

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As a threshold matter, the Navy alleges Pioneer's protest to GAO is untimely. The Navy asserts that, based on a telephone conversation with the contracting officer, Pioneer was aware, on or before August 17, 1982, that its bid might be rejected as nonresponsive, but did not protest until September 17, 1982. On August 17, 1982, Pioneer wrote to the Navy, stating that the contracting officer had advised Pioneer of a problem with its bid, but it was Pioneer's understanding that its bid had not been rejected as nonresponsive as of that date, and Pioneer asked that the deviation in wrist size be waived as a minor informality.

Pioneer was advised by letter of September 7, 1982, that its bid had been rejected as nonresponsive and filed a protest with GAO on September 17, 1982. We have held that for determining the timeliness of a protest, in this case, when the basis of protest is known, the relevant date is the date a bid is definitely rejected as nonresponsive. C. B. Goad Construction Co., B-199142, October 17, 1980, 80-2 CPD 294. Accordingly, Pioneer's protest of September 17, 1982, filed within 10 working days of receipt of the Navy's letter of September 7, 1982, is timely.

With regard to the merits, to be responsive, a bid as submitted must be an unequivocal offer to perform the exact thing called for in the IFB, which upon acceptance will bind the contractor to perform all its material terms and conditions. Redeye Enterprises; Standard Equipment Company, B-204814, B-204814.2, March 25, 1982, 82-1 CPD 283. Pioneer's bid clearly deviated from the specifications and, therefore, cannot be considered to be an unequivocal offer to deliver exactly what was called for in the IFB.

We find the deficiency in Pioneer's bid to be material and not subject to waiver as a minor informality under DAR § 2-405, supra. The solicitation stated that the gloves are anticontamination and containment gloves. Accordingly, bidders were on notice that the gloves were for the protection of workers against radioactive contamination in handling radioactive materials. The Navy reports, as follows, that the stated narrow wrist dimensions are needed to ensure the glove's snug fit, and this relates to a safety consideration--the protection of workers against the danger of radiological contamination of hand and body:

"The 18" gloves are worn under a pair of 12" gloves with or without anticontamination overalls. The 12" gloves are frequently changed. Therefore, the wrist dimension of the 18" gloves must meet the required measurements to preclude the 18" glove from sliding off the arm when changing the outer glove and to further reduce the risk of spreading contamination. These measurements are further required to maintain the clothing seal."

Pioneer essentially responds to the Navy's justification by challenging the specification, contending that the wrist dimensions in the solicitation do not accurately reflect the agency's need because the Navy Clothing and Textile Research Facility (NCTRF), which is responsible for setting clothing standards, allegedly has issued less restrictive standards for gloves and because the Navy has accepted Pioneer's deviation to the specifications in a prior procurement of these gloves.

We have held that a using activity's technical conclusions must be entitled to great weight and, thus, will not be overturned by our Office unless shown to be unreasonable. Garney Companies, Inc., B-196075.2, February 3, 1981, 81-1 CPD 62. See Westinghouse Electric Corporation, B-195561, May 5, 1980, 80-1 CPD 322. Moreover, the protester has the burden of affirmatively proving its case. See Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

In response to Pioneer's contention that the NCTRF has issued less restrictive specifications, the Navy advises that the standards set by the NCTRF are general standards which are not necessarily applicable for every activity. In this instance, the Navy states that the contracting activity modified the glove measurements to ensure the gloves were suitable for radiological work.

Pioneer also asserts that the Navy has waived the same wrist dimensions in the past and accepted Pioneer's nonconforming product. The Navy concedes that a prior contract was awarded to Sherwood Medical Industries, apparently another subsidiary of Brunswick Corporation, of which

Pioneer is also a subsidiary. The Navy asserts the circumstances were different because the prior procurement was a negotiated procurement, which permitted more flexibility and generally does not involve the concept of responsiveness and, therefore, the Navy consideration of the exceptions to the specifications was proper.

In any event, the fact that the agency may have waived the requirement on a prior procurement does not affect the rejection under the current procurement. The responsiveness must be determined from the bid itself. Norris Paint & Varnish Co., Inc., B-206079, May 5, 1982, 82-1 CPD 425; Engineering Design & Development, B-185332, February 11, 1976, 76-1 CPD 92.

Accordingly, Pioneer has not shown that the Navy's wrist size requirement is not material. Also, in light of our conclusion that the requirement was material, we distinguish other cases such as Sulzer Bros., Inc., and Allis-Chalmers Corporation, B-188148, August 11, 1977, 77-2 CPD 112, and Champion Road Machinery International Corporation, B-200678, July 13, 1981, 81-2 CPD 27, cited by Pioneer, which permitted waiver of a nonmaterial deviation from the specifications.

Pioneer also contends that by not waiving the deviation, the Navy paid a significantly higher price for the item than that bid by Pioneer. We have held that the possibility that the Government might realize monetary savings if a material deficiency is allowed to be corrected or waived is outweighed by the importance of maintaining the integrity of the competitive bidding system. Union Metal Manufacturing Company, Electroline Division, B-209161, November 2, 1982, 82-2 CPD 402.

Finally, to the extent Pioneer contends in its February 4, 1983, letter to GAO that the specifications were restrictive, overstated the Navy's actual needs, and were inconsistent with other Navy glove procurements, these allegations concern alleged improprieties apparent from the face of the solicitation which should have been raised prior to bid opening and are untimely. 4 C.F.R § 21.2(b)(1) (1982).

We dismiss the protest in part and deny it in part.

*for* *Milton J. Aroca*  
Comptroller General  
of the United States