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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-176628

JAN 24 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 of July 26, 1972, and subsequent correspondence, in which you protest the award of a contract to any other firm under Solicitation No. IPNFM-C3-44717-A-6-7-72 on the ground that you received your bid invitation late, thus making it impossible for you to submit bid samples on time.

Although your protest was filed before award of a contract, award was made to Shields Associates-Interiors on August 4, 1972, notwithstanding your protest, in accordance with the requirements of Federal Procurement Regulations (FPR) 1-2,407-8.

The solicitation in question was issued on May 15, 1972, by the Federal Supply Service of the General Services Administration and called for approximately 15,800 square yards of carpet in four specially designed colors, the same yardage in carpet cushion, and the installation thereof in the New Library Building, United States Naval Academy, Annapolis, Maryland.

Due to a discrepancy between the Government control samples and the Technical Description included in the solicitation, a clarifying amendment was issued on June 1, 1972, and the time for bid opening was extended from June 7, 1972, to June 15, 1972, in order to allow offerors adequate time to prepare their bid samples. Seven bids were received and when they were opened on June 15, 1972, you were the apparent low bidder. However, although your bid was received prior to bid opening time, it was not accompanied by the required bid samples and was, therefore, rejected as nonresponsive.

In this regard, paragraph 5 of the FPR, relating to the submission of bid samples, informed bidders that samples in the quantities, sizes, etc., required for the items so indicated in the solicitation had to be

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furnished as part of the offer and were required to be received before the time set for the opening of offers; and that:

"* * * Failure to furnish samples by the time specified in this solicitation will require rejection of the offer, except that a late sample transmitted by mail will be considered under the provisions for considering late offers * * *."

The record indicates that the samples were not submitted until June 30, 1972, 15 days after the date set forth in the solicitation for submission of both the bid and bid samples.

You maintain that you received the invitation late and, therefore, found it impossible to submit samples in the required size for all colors; and that you never received Amendment No. 2 which clarified the discrepancy between the Government's control samples and the Technical Description.

The General Services Administration explains that your company was not automatically referred a copy of the solicitation because your Bidder's Mailing List Application was not submitted in sufficient time to permit your inclusion on the mailing list used for this procurement action. In any case, this Office has consistently held that the failure of a bidder to receive an invitation for bids or a copy of an amendment to the invitation does not ordinarily require either a resolicitation of bids or consideration of a bid or modification received after the time fixed for opening of bids. B-161896, September 1, 1967; B-154580, July 8, 1964; 40 Comp. Gen. 125, 126 (1960). On the present record, there is no indication that there was any conscious or deliberate intention to exclude you, or any other prospective contractor, from participation in the procurement. Additionally, the procurement was advertised in the Commerce Business Daily at the time of issuance, and thus you could have learned about it in that manner.

You also contend that you attempted to submit 3" x 2 1/2" bid samples with your bid in the bid room, but that you were told samples would not be accepted. However, neither the Bid Opening Officer, Mrs. Cannady, nor any other General Services Administration employee in the bid opening room at the time your bid was submitted, has any recollection of having been offered, or having refused to accept, the samples allegedly offered either prior to, or subsequent to, bid opening.

We recognize that there is a conflict in the record as to whether there was an attempt by you to submit conforming samples. After a careful review

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of the evidence presented we conclude that we should accept the administrative version of the disputed facts.

Under the law governing formally advertised procurements, awards must be made to the lowest responsible bidder whose bid conforms to the invitation for bids. Since your firm did not timely submit your bid samples, your bid did not conform to the invitation and, therefore, was properly rejected. See B-172715, July 5, 1972.

You have raised several additional points which we feel should be discussed. You stated in your letter dated July 2, 1972, that "since specifications alone determine quality and appearance of carpet * * * appearance presentation [is therefore] moot."

It was the feeling of the procuring agency, however, that the required colors, texture and general "feel" of the carpets in question could not be adequately described in the applicable Technical Description and, therefore, the requirement for bid samples was essential. They stated that samples in this instance were necessary to assure that bidders understood the Government's requirements, and that products offered would meet the Government's needs.

The use of bid samples is authorized by section 1-2.202-4(b) of the Federal Procurement Regulations (FPR), and this Office has sanctioned the requirement for bid samples where the purpose is to enable the Government to determine whether the product proposed to be supplied by the bidder will meet the Government's particular needs, and such determination cannot be adequately made from a written proposal. 46 Comp. Gen. 406, 408 (1966). In this connection, we have held that a specification requirement for bid samples was warranted where some properties of an item to be procured could not easily be described, especially as to such features as feel and texture. See B-132669, November 4, 1963. The carpet in question is such a product and, therefore, the requirement for bid samples was appropriate.

You have also alleged that as of October 27, 1972, the carpet in question "has neither been installed, shipped nor its manufacturing completed." Additionally, you contend that the manufacturer was changed from Roxbury Carpet Company to J. P. Stevens because they were "lucky enough to have the right sample with GSA procurement."

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Contrary to these statements, it is reported that installation of the carpet began October 10, 1972, and has progressed continuously as parts of the four floors to be carpeted were made available to the contractor. Apparently, the reason the carpeting is not yet complete is because 50 percent of the library's ground floor has yet to be turned over to the contractor. The remainder of the building has been completed.

Also, the GSA has informed our Office that the manufacturer of the carpet was changed by the successful low bidder from Roxbury to J. P. Stevens in order to guarantee delivery of the product, and not because Stevens had samples with the General Services Administration.

Since we find no legal basis to object to the administrative action taken with respect to your bid, your protest is accordingly denied.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States