



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

B-176771

JAN 4 1973

Nevada Paving, Incorporated
800 Glendale Road
Sparks, Nevada 89431

Attention: Mr. James Thornton

Gentlemen:

Reference is made to your telegram dated August 16, 1972, and a letter of the same date from the Associated General Contractors of America, protesting against rejection of your bid under Specification No. 2000-856, for the paving of the Stampede Dam Access Road, Washoe Project, Nevada-California, issued by the Bureau of Reclamation, Department of Interior, Sacramento, California.

Under the instant Invitation for Bids (IFB), three contractors submitted bids with Nevada Paving Company (Nevada) being the apparent low bidder. However, the bids of Nevada and the two other bidders were all rejected for being nonresponsive in failing to comply with the Equal Employment Opportunity and Affirmative Action requirements of the IFB.

The contract was to be performed in the geographic area subject to the Greater Sacramento Area Plan. The IFB contained the Equal Employment Opportunity Affirmative Action Requirements Bid Conditions which consisted of Parts I and II. Part I applied to those bidders who were signatories to the Greater Sacramento Plan, and Part II applied to bidders who were not signatories to the Plan. None of these bidders were signatories to the Greater Sacramento Area Plan and therefore, all were subject to Part II of the Bid Conditions.

Part II required that a bidder submit with his bid an affirmative action plan. The plan must set forth goals and timetables of minority manpower utilization within ranges listed in the Bid Conditions.

The other two bidders did not submit any affirmative action plan with their bids. Nevada submitted with its bid a copy of a Multi-Employer Affirmative Action Program designated as "The Northern

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Nevada Construction Opportunity Program." Although this program was designed to increase minority personnel participation in the construction industry, it was determined that the plan did not meet the requirements of Part II of the Bid Conditions.

The purpose of the Multi-Employers Affirmative Action as stated in the agreement was to increase minority group personnel in the construction industry "within the geographical boundaries of the Northern Nevada Building Trades Council."

The specific portion of the Multi-Employers Affirmative Action Program which dealt with goals reads as follows:

"Goals

"This agreement is to increase minority employment in the construction industry, the A.G.C. thirteen (13) member companies, and the Building Trades Council nine (9) unions have pledged 30 immediate slots. Our goals are to start with ten (10) minorities each month with intentions to develop our present program to include not only pre-apprenticeship but qualified apprentice when recruited, also, on-the-job training and up-grading.

"Projection

"Is to indenture approximately 30 minority group persons in the construction industry a year."

Part II of the Bid Conditions set forth the acceptable ranges for all trades to be utilized on the project to be:

Until 12/31/72	2.5%	-	5%
From 1/1/73 until 12/31/73	5.0%		7.5%
From 1/1/74 until 12/31/74	7.5%		10%
From 1/1/75 until 12/31/75	10.0%		12.5%
From 1/1/76 until 12/31/76	12.5%		15%

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It appears doubtful if the goals set by the 13 member companies would fulfill the ranges called for under the solicitation. Also the plan only required subcontractors with subcontracts of over \$500,000 to submit an Equal Employment Opportunity Affirmative Action Program, while the Bid Conditions required all subcontractors to do so.

In 50 Comp. Gen. 844 (1971) and B-174932, March 3, 1972, this Office considered solicitations which included Affirmative Action Requirements similar to those in the instant IFB. In the aforementioned decisions, we held that such requirements are material and the language required a bidder to commit itself, prior to bid opening, to the Affirmative Action Requirements, in the manner specified in the solicitation. We also held that a bidder who fails to make such a commitment in its bid may not have the deviation waived, nor may the bidder be allowed to correct the deficiency after bid opening in an effort to render the bid eligible for award. B-175099, April 13, 1972.

Nevada neither committed itself to the Affirmative Action Requirements as specified in the Bid Conditions nor did the separate plan which was submitted with the bid meet the affirmative action requirements set forth in the solicitation.

For the reasons stated, we must conclude that the bid of Nevada was properly rejected and, therefore, the protest is denied.

Very truly yours,

PAUL G. DEMBLING

Acting Comptroller General
of the United States