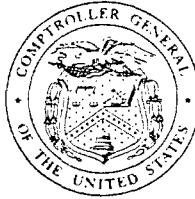


S. Reutershan
Pro. LAW I

DECISION



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

8916

FILE: B-192621

DATE: January 22, 1979

MATTER OF: Achievement Products Inc. *SL 0724*

[Protest Concerning Agency Contention that Protester was Notified During Discussions that Proposal was Deficient]

DIGEST:

Where only evidence disputing contracting agency position that protester was notified during discussions that proposal was deficient is protester's contradictory statement, protester has failed to carry burden of affirmatively proving its assertion.

Achievement Products Inc. (Achievement) protests the rejection of its offer under request for proposals (RFP) NOO189-78-R-0291, issued on June 2, 1978, by the Naval Supply Center (NSC), Norfolk, Virginia.

The solicitation, conducted as a total small business set-aside, requested proposals for a contract to supply award plaques. The RFP was amended twice; the effect of the amendments was to change the color specification for the surface area of the plaques from "yellow-brass casting" (original RFP) to "yellow brass plated casting" (amendment 0001) to "highly polished, athenian bronze finish" (amendment 0002). No samples were required to be furnished under the RFP.

On June 26, 1978, Achievement submitted its prices and an unsolicited sample of the proposed product. In a letter accompanying its offer, Achievement described the sample as "what we consider to be a highly polished athenian bronze."

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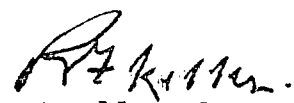
[Signature]

Discussions were conducted with Achievement on July 7, 1978. The record indicates that on this date the Navy informed Achievement by telephone that its unsolicited sample did not conform to the "highly polished athenian bronze" color specified in the RFP because of its copper appearance; however, Achievement responded that it considered the finish on the sample to be athenian bronze and that it was similar to what it would furnish if awarded the contract.

By letter of August 4, 1978, the contracting officer advised Achievement that its proposal was rejected because the sample did not conform to the color specification. Achievement protested to this Office on August 14, 1978.

The essence of Achievement's protest is that it should have been notified by the agency if the finish it offered was not what the agency required. However, as indicated above, the record shows that NSC notified Achievement by telephone on July 7, 1978. We have held that, where the contracting officer insists that the protester was advised of deficiencies in its proposal and the protester has provided no probative evidence contradicting that position, adequate discussions were held concerning the deficiencies. Southern California Ocean Studies Consortium, B-187587, June 20, 1977, 77-1 CPD 440. Also, where the only evidence before our Office with respect to a disputed question of fact consists of contradictory statements by the protester and the contracting agency, the protester has failed to carry the burden of affirmatively proving its assertions. Telectro-Mek, Inc., B-185892, July 26, 1976, 76-2 CPD 81.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States