

FINDINGS OF FACT

1. Request for quotation (RFQ) #C-4014, for a six month supply of trash can liners and bags, was issued by the Maryland Department of General Services Purchasing Bureau (DGS) on November 9, 1981. Bids were due on December 10, 1981.
2. The RFQ provided in pertinent part as follows:

Condition No. 6 "Sizes shown are the sizes used in past contracts. The closest manufacturers' standard sizes and gauges are to be bid, but final acceptance of alternate sizes and gauges will be at the discretion of the Purchasing Bureau."
3. Vendors were to bid 15 different items. These items were described in the RFQ by the required capacity in gallons, size in inches, material thickness, weight per 1,000 bags, and the number packed per case. The RFQ also provided that:

[t]he using Authority upon receipt of shipment will verify the bag size, quantity per cs. and material thickness. The weight factor is very important. If the bag does not meet the weight criteria of the specification, the bag is not acceptable. (underscoring added)
4. Specification No. 485-05-1 for polyethylene bags was attached to the RFQ and provided for a + 5% tolerance on the weight per thousand bags. Material specification 7.1 further provided that "[t]he bags shall be made from flexible unsupported polyethylene resin film material conforming to Federal Specifications L-P-378 Type I, Class 1."
5. Quotations were received from twelve vendors. Subsequent to bid opening, apparently based on the large spread in price of the bids, the procurement officer requested certain information from the bidders about the products they intended to supply.
6. Based on the post-bid information supplied by Appellant, the procurement officer determined that Appellant's bid was not responsive because the product it planned to supply was not within the weight tolerance prescribed by the specification. The procurement officer further determined that nine other bidders also could not comply and that the two that could were approximately \$50,000 higher in price than the low bid of Appellant.
7. In studying the post-bid information received from the bidders, the procurement officer determined that a new specification for trash bags, based on current industry technology and including functional use criteria, would increase competition and probably generate a lower price for the State. He therefore rejected all bids.
8. Appellant protested these determinations of the procurement officer and contended that its bid was responsive. The procurement officer, however, issued his final decision on March 5, 1982 and concluded both that Appellant's bid was non-responsive and that no award, in any event, would be made. It is from this decision that Appellant filed a timely appeal to this Board on March 12, 1982.

DECISION

This appeal raises several matters for consideration dealing with the procurement officer's function in verification of bids as well as his actions in rejecting all bids. Beginning first with the rejection of all bids, Article 21, Md. Annotated Code, Section 3-301 and COMAR 21.06.02.01 C. permit this action only as follows:

(1) After opening of bids or proposals but before award, all bids or proposals may be rejected in whole or in part when the procurement officer, with the approval of the agency head or his designee, determines that this action is fiscally advantageous or otherwise in the State's best interest. Reasons for rejection of all bids or proposals include but are not limited to:

(a) The State agency no longer requires the supplies, services, maintenance, or construction;

(b) The State agency no longer can reasonably expect to fund the procurement;

(c) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;

(d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(e) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;

(f) Bids received indicate that the needs of the State agency can be satisfied by a less expensive equivalent item differing from that on which the bids or proposals were invited; or

(g) All otherwise acceptable bids or proposals received are at unreasonable prices.

The initial issue, therefore, is whether the procurement officer reasonably determined that the rejection of all bids was fiscally advantageous or otherwise in the best interest of the State.

The disparity in prices revealed at bid opening led the DGS procurement officer to seek verification of bids. In so doing, the procurement officer learned that ten bidders intended to supply trash bags which did not comply with the weight tolerances set forth in the RFQ. This verification process further revealed that recent industry changes had resulted in the development of lighter, less expensive, but functionally equivalent bags, greater competition and less expensive prices would result. Based on the price disparity between those who bid in accordance with the State's intent and those who bid the functionally equivalent, lighter bags, we believe that the procurement officer reasonably determined that it was fiscally advantageous to reject all bids. Compare COMAR 21.06.02.01 C.(1)(f)

Appellant further contends that the RFQ reasonably may be read to permit the supply of functionally equivalent bags. In this regard we are told that Condition No. 6 to the RFQ had the effect of overriding the weight requirements by permitting bidders to provide the newer manufacturers' standard size and gauge bags. Whether the RFQ reasonably may be read in this manner, however, is immaterial. The RFQ clearly specified the type of polyethylene trash bag and weight per thousand bags which each bidder was to supply. These type bags were available and could have been supplied. At best, therefore, the RFQ was materially ambiguous with price being directly affected by the bag gauge and weight. Under such circumstances, it was reasonable for the procurement officer to reject all bids. Compare Comp. Gen. Dec. B-177660 (April 24, 1973) unpub., Nash and Cibinic Federal Procurement Law Vol. 1 p. 230; CRF v. United States, Ct. Cl., No. 470-77 (June 18, 1980) ___ Ct. Cl. ___ (1980); Comp. Gen. Dec. B-180642 (June 6, 1974) 74-1 CPD paragraph 308; Comp. Gen. Dec. B-177879 (May 18, 1973) 52 Comp. Gen. 842; Comp. Gen. Dec. B-175254 (August 16, 1972), 52 Comp. Gen. 87; Comp. Gen. Dec. B-174813, (April 10, 1972), 51 Comp. Gen. 635.

Finally, although not determinative of this dispute, we address the issue concerning the responsiveness of Appellant's bid. Appellant submitted an unqualified bid which offered to supply exactly what the RFQ requested at a given price. It was only after the DGS procurement officer sought verification that he realized that Appellant's interpretation of the RFQ was different than his own. On this basis, Appellant's bid was deemed nonresponsive. It is well settled, however, that responsiveness must be determined from the face of the bidding documents. See Aeroflow Industries, Inc., Comp. Gen. Dec. B-197628, 80-1 CPD paragraph 399; United McGill Corp. and Lieb-Jackson, Inc., Comp. Gen. Dec. B-190418, 78-1 CPD paragraph 119. Where the procurement officer, through the verification process, finds that a material ambiguity exists, he may not seek to impose his interpretation upon penalty of a determination of nonresponsiveness. See CRF v. United States, supra. Accordingly, the procurement officer erred in rejecting Appellant's bid for this reason.

For the foregoing reasons concerning the right of the procurement officer to reject all bids, we therefore deny the appeal.