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

B-178414

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June 20, 1973

Environmental Tectonics Corporation
James Way
County Line Industrial Park
Southampton, Pennsylvania 18986

Attention: Mr. Richard E. McAdams
Contract Administrator

Gentlemen:

This is in reply to your telefax message dated April 10, 1973, and letter dated May 24, 1973, protesting the award of a contract to the low bidder, Tenney Engineering, Inc. (Tenney), under IFB DAAA21-73-B-0280, issued at Picatinny Arsenal, Dover, New Jersey, for the manufacture and installation of a Thermal Shock Chamber in accordance with specifications.

Essentially, it is your position that Tenney's failure to attend the "required" prebid site inspection rendered its bid nonresponsive. You state that to hold otherwise prejudices other bidders and would not permit all bidders to compete on a common basis.

The provisions in the invitation concerning site inspection are included in Section C, Instructions, Conditions, and Notices to Offerors at page 11 and in Section F, Description/Specifications at page 32, paragraph 11.6, as follows:

SITE VISIT (1967 APR)

Bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for withdrawal of a bid after opening or for a claim after award of the contract.

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PUBLISHED DECISION
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11.6 Prospective contractors are required to inspect the site prior to bidding as special rigging hookup and carpentry is required to install the chamber.

You have taken the position that Tenney's bid is nonresponsive since prospective contractors were "required," "urged" and "expected" to attend site inspection, and since site conditions apparent at time of inspection could well affect price and quality.

Under formal advertising procedures for Government contracts, it is an established rule that a bid, to be acceptable, must be responsive as submitted, that is, it must conform to all material requirements of the advertised terms and specifications. 10 U.S.C. 2305(c). The Government's acceptance of such a bid effectively binds the bidder to perform in accordance with the advertised terms and specifications. 42 Comp. Gen. 502 (1963).

In our opinion the purpose and the effect to be given to the above-quoted provisions regarding the site visit are obvious. By including these provisions the Government sought to warn bidders that site conditions could affect the cost of performance of the contract and in the event a bidder failed to inspect the site, the Government sought to protect itself against the necessity of permitting withdrawal of such bid after opening or against a claim after award of the contract. We therefore believe it is clear that bidders were to assume the risk of any costs of performance due to observable site conditions and that the Government intended to consider a bid for acceptance notwithstanding a bidder's failure to inspect the site. In view thereof, we must conclude that by submitting its bid under such conditions, Tenney knowingly committed itself to manufacture and install the chamber at its bid price and to assume the risk of any unanticipated increased costs due to observable site conditions, a basis common to all participating bidders irrespective of nonattendance at site inspection. See 1 Comp. Gen. 321 (1921).

We have also noted your contention that "other bidders were prejudiced and very likely dissuaded from bidding because site visit was clearly stipulated, as not to do so would be cause for rejection of their bid." In this connection, there is no provision in the solicitation to the effect that failure to attend the site inspection would be cause for bid rejection, and for the reasons stated above we believe the contrary is in fact the case. Moreover, your argument

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that other bidders may have been dissuaded from bidding because of the site inspection provisions is entirely speculative and in any event unpersuasive since we have concluded that all bidders were bidding on the common basis of meeting the specification requirements irrespective of attendance.

Accordingly, your protest must be denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States