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

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B-178377

July 25, 1973

Olympia USA, Inc.  
1133 15th Street, NW.  
Washington, D.C. 20005

Attention: Mr. William H. Lord  
Government Sales Manager

Gentlemen:

By letter dated May 22, 1973, and prior correspondence, you protested the rejection of your bid as nonresponsive to invitation for bids (IFB) FP.HO-P-58029-A-3-14-73, issued by the Federal Supply Service, General Services Administration (GSA).

The IFB required bids for 121 non-portable, electric typewriters in accordance with the GSA purchase description attached to the IFB. As pertinent, article 25 of GSA Form 1424, Supplemental Provisions (Rev. 3-72), which was incorporated by reference, provided:

Where procurement is effected under specifications or purchase descriptions (other than "brand name or equal") and the Government does not specifically request bid samples, descriptive literature or references to brand names, models or part numbers as an integral part of the bid, bids which are accompanied by any of the foregoing will be rejected unless it is clear from the bid or accompanying papers that the samples, descriptive literature, or references to brand names, models or part numbers are not intended to qualify the bid and that the bidder proposes to furnish items fully in accordance with the specifications or purchase descriptions. Where offers contain unsolicited material such as samples, descriptive literature, or references to brand names, models, or part numbers, the Government will not be responsible in any way for determining whether the items which are offered meet the Government's requirements set forth in the applicable specifications or purchase descriptions.

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Olympia USA, Inc. (Olympia) submitted the low bid, but typed the following on the bidding schedule, "Olympia SOE 50N 15". Upon discovery of the inserted model number, the contracting officer rejected Olympia's bid as nonresponsive without further inquiry pursuant to article 25. Award was made to the second low bidder.

Olympia contends that the inserted model number was not intended to qualify its bid. Rather, its alleged purpose was to indicate which one of four models it manufactures that it considered to meet the specifications that it proposed to furnish. Olympia states that since it has bid in this manner previously and received awards, it should also receive this award. In the alternative, Olympia asserts that the specifications were ambiguous.

It is GSA's position that article 25 of Form 1424 clearly established that the insertion of a model number would be deemed a qualification of the bid, absent a clear expression accompanying the bid that the offered item would conform to the specifications. Pursuant to article 25, as soon as the contracting officer was aware of Olympia's qualification, he could reject the bid as nonresponsive without further action.

The question of responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items or services in total conformance with the terms and specifications of the IFB. This determination must be made from the bid document as of the time bids are opened. A limited exception to this rule has evolved in that the Government may refer to published commercial literature if it was publicly available prior to bid opening. 50 Comp. Gen. 8 (1970). However, by the clear terms of article 25 of GSA Form 1424, GSA not only apprised bidders of the consequences of including with its bid unsolicited information without further clarification, but warned that the Government would not inquire beyond the bid documents to determine whether the offered items conformed to the purchase description. In this regard, a bidder who submits a bid without exception is deemed to have acquiesced in the terms and conditions set out in the IFB. There is no dispute that Olympia was on notice of article 25 or that GSA acted in conformance with the provisions of the IFB. In this light, Olympia cannot now protest GSA's actions.

In any event, GSA states that a subsequent review of your literature on hand within GSA, i.e., Olympia's Authorized Federal Supply Schedule Price List, failed to uncover any information

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concerning the bid model. Therefore, even if GSA had availed itself of the opportunity to check available literature to determine whether the offered model conformed to the specifications, it could not have affirmatively established conformity.

Concerning Olympia's contention that the insertion of the model number was consistent with its prior bidding practices under which it received awards previously, it is our view that improper bidding practices in the past do not justify a repetition of the same error. B-171417, March 9, 1971.

Regarding your alternative contention that the specifications were ambiguous, section 20.2 of our Interim Bid Protest Procedures and Standards requires that all protests based on an alleged impropriety in a solicitation which was apparent prior to bid opening must be filed prior to bid opening. Therefore, this contention is untimely and will not be considered.

Accordingly, your protest is denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General  
of the United States