

DECISION



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

60285

FILE: B-183688

DATE: December 9, 1975

MATTER OF: R & O Industries, Inc.

97611

DIGEST:

1. Rejection of bid samples on basis that hammer handles were not "well proportioned" was questionable because that imprecise term was not defined by IFB. In contrast, rejection of samples for poor "workmanship" was proper where that term was defined by solicitation.
2. Although testing laboratory determined that samples of protester's products complied with the subjective characteristics contained in the IFB, the laboratory's evaluation is not a sufficient basis to overcome judgment of contracting agency, especially where agency and laboratory did not test the same samples.
3. Failure of bid sample to conform to objective standard required by specifications may be indicium of poor workmanship justifying rejection under that subjective standard.

R & O Industries, Inc., has protested award to anyone but itself of a contract for the manufacture of certain hammers, Items 2 and 6 through 13 of General Services Administration's (GSA's) IFB FPWN-E5-55741-A-3-25-75. R & O was the low bidder on the protested items. Clause 218 of the solicitation set forth certain bid sample requirements, and provided for evaluation as follows:

"(c) Samples will be evaluated to determine compliance with all characteristics listed below:

<u>SUBJECTIVE CHARACTERISTICS</u>	<u>OBJECTIVE CHARACTERISTICS</u>
Workmanship, Balance and Handle Proportions In Accordance with Federal Specification GGG-H-86c and Interim Amendment 2."	None

Clause 215(b) provided:

"Failure of samples to conform to all * * * characteristics [listed for examination in the invitation] will require rejection of the bid."

R & O submitted for evaluation Items 1 and 8 as representative of Items 1 through 6 and Items 7 through 13, respectively. GSA inspected the samples and on March 27, 1975 determined that R & O's samples "fail to comply in that the handles with grips are not well proportioned." Because of this noncompliance, R & O's bids for Items 2 and 6 through 13 were considered nonresponsive. The samples of all bidders, including R & O, were reevaluated, and on May 8, 1975, the noncompliance was confirmed.

R & O's samples were rejected for failure of the hammer handles to be "well proportioned" and because the hammers evidenced "poor workmanship." A rejection based upon the lack of a "well proportioned" hammer handle is legally questionable because GSA's procurement personnel had no basic definition of that term. It is a basic tenet of competitive procurements that the terms of the invitation must be expressed clearly, precisely, and unambiguously so all prospective bidders will know what is required of the product being offered. Boston Pneumatics, Inc., B-180798, November 14, 1974, 74-2 CPD 260 at 5.

The alternative basis for rejection was inadequate "workmanship," which was defined by paragraph 3.24 of the specifications as follows:

"Workmanship shall be first class in every respect. The tools shall have no burrs, fins, sharp projections, cracks, or any other imperfections which may impair their durability and serviceability."
(Emphasis added.)

R & O's sample for Items 1 through 6 was rejected because it:

"Fails workmanship in that forge flash is not removed from the poll (para. 3.2.1). Further, the handle with grip is not well proportioned and the handle grip is not attached to the shaft to preclude slipping upon the shaft during normal use (para. 3.2.2.3)."

Paragraph 3.2.2.3 of the specifications provides in relevant part:

"The grip portion shall * * * be so attached to the handle shaft that it will not twist nor slip upon the shaft during normal use."

GSA has explained as follows why in its opinion an imperfectly attached handle grip constitutes poor workmanship:

"A loose handle grip is an indication of poor workmanship and is also a defect affecting durability and serviceability. Poor workmanship is evidenced by the manufacturer's lack of care in applying bonding. Durability is impaired because the grip will very likely become looser with continued use. Serviceability is impaired regardless of whether the grip is secure at the base or not, because all users of hammers do not hold them the same way. A user who 'chokes up' on the grip may find that the hammer in question will strike a glancing blow due to the shank and head turning when an off center contact is made with the item being struck."

The bid sample submitted for Items 7 through 13 was rejected because it:

"Fails workmanship in that the head is not affixed to the handle to prevent loosening under any working condition and the handle with grip is not well proportioned."

In commenting on this defect, FSS has stated:

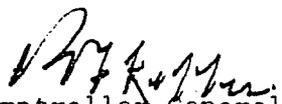
"The loose hammer head was initially detected by Mr. Roach (* * * /Office of Procurement/) during a review, in his office, of all documentation and evidence that was requested by him immediately following notification of the protest from R & O. A part of Mr. Roach's examination involved the inspection of all samples for Item 8, including those submitted by R & O. Detection of the R & O defect for Item 8 was almost accidental since it occurred during a casual examination of the hammer. The hammer head was so noticeably loose that a mere touch of the head in one hand and the handle in the other detected movement."

R & O protests the rejection of its low bid, contending that its bid samples in fact complied with the subjective characteristics of the solicitation, as evidenced by the evaluation of an independent testing laboratory, and that the rejection was based on an objective characteristic whereas the solicitation stated that the bid samples would be examined only as to compliance with subjective characteristics.

In support of its contention that its products in fact comply with the solicitation, R & O has submitted the evaluation of an independent testing laboratory. GSA, in response, notes that R & O submitted different samples to GSA and to the independent laboratory; therefore, GSA states the evaluation of the latter does not establish that the samples furnished to GSA in fact met the requirements. As procurement officers are better qualified than this Office to review and evaluate the sufficiency of offered products to determine whether they meet the requisite characteristics, we will not substitute our judgment for that of the contracting agency unless the record establishes that such judgment was without basis in fact. B-176210, February 2, 1973. The only argument protester presents to impeach the evaluation of GSA is that the independent laboratory reached differing results based on tests conducted on samples other than those submitted to GSA. In the absence of a showing by protester that the bid samples were not fairly and conscientiously evaluated, this is not a sufficient basis to overcome the judgment of FSS. Boston Pneumatics, Inc., B-181760, November 15, 1974, 74-2 CPD 265 at 5. Since the IFB specifically stated that failure of the samples to conform to the characteristics to be tested would require rejection of the bid, the contracting officer properly relied on the reported test results to reject R & O's bid as nonresponsive.

The protester next contends that its failure to securely attach the handle grip and hammer head were covered by objective portions of the specifications and were therefore improperly considered by GSA in its evaluation of bid samples under subjective criteria such as "workmanship." This identical issue was raised by the protester and decided against it in a similar context in B-175555, August 25, 1972. We agree with GSA's position that the deficiencies observed were indicia of careless manufacture which could impair the "durability and serviceability" of the items. We believe that samples could be rejected for poor "workmanship" since that term was adequately defined by the IFB and that GSA's determination that the bid samples evidenced poor workmanship was reasonable.

For the above reasons, the protest is denied.


Deputy Comptroller General
of the United States