

01442

DECISION



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

FILE: B-187154

DATE: January 12, 1977

MATTER OF: Revere Supply Co., Inc.

DIGEST:

Where invitation did not follow the required procedures for a QPL procurement, and in fact no QPL list existed, and where bidders might have believed themselves already qualified to bid due to outdated qualification list cited in invitation, which was in conflict with specification in IFB, invitation was properly canceled in view of ambiguity which kept bidders from competing on an equal basis.

Invitation for bids No. H85-0201-5793-0 was issued by the United States Coast Guard Curtis Bay Yard on June 14, 1976, for the procurement of 10 eight-man inflatable life rafts in accordance with Department of Transportation (DOT), United States Coast Guard, Purchase Description ENE 40-72, dated March 31, 1972. The item was treated as a qualified product with the following pertinent qualified products clause language set forth in the invitation:

"B-10 QUALIFIED PRODUCTS

"WITH RESPECT TO PRODUCTS DESCRIBED IN THIS INVITATION AS REQUIRING QUALIFICATION, AWARDS WILL BE MADE ONLY FOR SUCH PRODUCTS AS HAVE, PRIOR TO THE TIME SET FOR OPENING OF BIDS, BEEN TESTED AND APPROVED FOR INCLUSION IN THE QUALIFIED PRODUCTS IDENTIFIED BELOW. MANUFACTURERS WHO WISH TO HAVE A PRODUCT TESTED FOR QUALIFICATION ARE URGED TO COMMUNICATE WITH THE OFFICER DESIGNATED BELOW. MANUFACTURERS HAVING PRODUCTS NOT YET LISTED, BUT WHICH HAVE BEEN QUALIFIED, ARE REQUESTED TO SUBMIT EVIDENCE OF SUCH QUALIFICATION WITH THEIR BIDS, SO THAT THEY MAY BE GIVEN CONSIDERATION.

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"QUALIFIED PRODUCTS LIST: U.S.C.G. EQUIPMENT
LIST - CG 190 - DATED 1 AUGUST 1972. OFFERORS
HAVING PRODUCTS THEY INTEND TO OFFER FOR
TESTING ON QUALIFICATION SHOULD CONTACT: * * *"

The following bids were received by the July 14 opening date:

G. J. Hendry Company	\$17,750	
Switlik Parachute Company Inc.	\$20,120	1 percent prompt payment discount (PPD) 20 calendar days
Revere Supply Co. Inc. (Revere)	\$21,160	1 percent PPD 20 calendar days
The B. F. Goodrich Company	\$21,210	Net 30 calendar days

The low bid was found to be nonresponsive because it contained no identification of either the item name or part number of the product the bidder was offering. The second low bidder's bid was also found nonresponsive because the raft identified by the "test number" on the bid form did not include an inflatable boarding ramp as required by the purchase order description. Revere's bid was found non-responsive because the item name and number were not inserted on the bid form. An examination of the Goodrich bid, ultimately found to be nonresponsive, showed that although that bidder had submitted a "test number" in its bid, the life raft offered was not listed in either the 1972 or 1975 editions of CG-190, the existence of the later edition having been discovered after bid opening. While Goodrich had submitted its life raft for approval some time prior to bid opening, approval was not granted until after bid opening. As noted above, approval was required by the invitation to have been acquired prior to bid opening.

CG-190 is a list of items approved or accepted under marine inspections and navigation laws. The life rafts listed on CG-190 are approved pursuant to 46 C.F.R. subpart 160.051, et seq. (1975), "Inflatable Liferrafts."

DOT procurement regulations covering the qualifications of products are set forth at 41 C.F.R. § 12-1.1154 (1975) in pertinent part as follows:

"§ 12-1.1154 Opportunity for qualification.

"(a) Upon determination that a product is to be covered by a QPL, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product. Appropriate notice of such determination shall be furnished to * * * Commerce Business Daily, * * * requesting publication of five consecutive issues of the daily 'Synopsis of U. S. Government Proposed Procurement, Sales and Contract Awards'. The publicity given to the requirement for qualification testing shall include the following:

"(1) An intention to establish a QPL for a product;

"(2) The specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

"(3) Notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a QPL.

"(b) Lists shall always be kept open for inclusion of products from additional suppliers."

It is admitted that these procedures were not followed prior to the issuance of the instant IFB. In fact no qualified products list (QPL) existed for the life raft in question. Those manufacturers who had obtained approval pursuant to 46 C.F.R. § 160.051 had done so in order to sell their products for use on commercial vessels subject to Coast Guard inspection. In 46 C.F.R. § 160.051 there was no requirement for a boarding ramp as is required by specification ENE 40-72. Specifically, 46 C.F.R. § 160.051-7(b)(1) provides:

"(1) Boarding ladder. A Boarding ladder or equivalent at each entrance to the raft. In addition, hand holds or equivalent on each side of each entrance to assist in boarding."

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Thus, those manufacturers who had obtained approval for a boarding ladder under this provision would not be qualified under IFB 5793's specification which required a boarding ramp.

Consequently, the Coast Guard determined to cancel the procurement because:

"The inclusion of qualified products list provision in the IFB where no qualified product list exists, and when bidders have not been given an opportunity to qualify their products as required by the procurement regulations, has resulted in an ambiguous and deficient specification."

Revere contests this cancellation and also the subsequent issuance of two procurements which include the 10 life rafts that it believes it should have received award on under invitation No. -5793-0. It is contended that neither of the two low bidders made any attempt to obtain qualification for the products they offered, and, consequently, that canceling the invitation and thereby providing more time for any necessary qualification (the new procurements now permit product testing and acceptance after contract award) is equal to giving preferential treatment to the other bidders. It is further contended that inasmuch as the same specification and requirement were used for items procured in the past, since Revere was responsive to this invitation for 10 items, and since its price was shown to be fair and reasonable in view of its proximity to the Goodrich price (the only other qualified--albeit late--bidder), award on the 10 items should as a matter of law and in all fairness have been made to Revere.

In New England Engineering Co., Inc., B-184119, September 26, 1975, 75-2 CPD 197, we stated:

"Federal Procurement Regulations (FPR) § 1-2.404-1 (1964 ed. FPR circ. 1) permits the contracting officer to cancel an invitation after bids have been opened only if there is a compelling reason to reject all bids. An example of such an instance is when inadequate, ambiguous, or otherwise deficient specifications are cited in the invitation for bids. FPR § 1-2.404-1(b)(1) (1964 ed. FPR circ. 1). In interpreting this section, we have

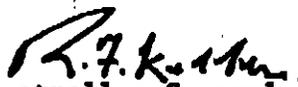
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held that the mere utilization of ambiguous or deficient specifications in an IFB does not, of itself, constitute a compelling reason to cancel the IFB. 32 Comp. Gen. [285 (1972)]. We have refused to permit cancellation if the bids under the IFB would satisfy the Government's actual needs and no prejudice would result from an award because bids submitted to a revised solicitation would not be on a different basis than originally submitted. See Immigration and Naturalization Service, B-182949, March 19, 1975, 75-1 CPE 165, and cases cited therein."

However, the ambiguity in the present case would not result in the fulfillment of the Government's minimum needs and bidders were not competing on an equal basis. In drawing up the instant invitation the contracting officer was creating a QPL without going through the procedures properly required at 41 C.F.R. § 12-1.1134. In doing so, potential bidders were not, so it would appear in view of what occurred in the instance of Goodrich, provided with sufficient time even to qualify for the procurement. Further, it is possible that potential bidders--notwithstanding the Goodrich attempt to receive approval--may have been misled by the reference to 46 C.F.R. § 160.051, which requires boarding ladders "or equivalent," and the reference to CG-190, dated August 1, 1972, upon which the two low bidders were listed, into believing that once having qualified with boarding ladders "or equivalent" the later substitution of any equivalent could be made without the need for requalifying. Further, while 46 C.F.R. § 160.051(e)(11) (1975) apparently incorporates a new "hot and cold" test, the manner in which the invitation is addressed to a 1972 specification and a 1972 qualification list does, at minimum, make ambiguous whether or not that test is necessary for qualification.

Consequently, in view of the above, we do not object to the cancellation and the resolicitation of the procurement in question, and the protest is denied.

Deputy


Comptroller General
of the United States