

DECISION



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

FILE: B-206079

DATE: May 5, 1982

MATTER OF: Norris Paint & Varnish Co., Inc.

DIGEST:

Where bid fails to identify each product offered but contains Qualified Products List test number applicable to product differing from qualified product required by solicitation and there is no information in bid which would permit agency to determine that bidder intended to offer required products, bid was properly rejected as nonresponsive.

Norris Paint & Varnish Co., Inc. protests the award of contracts to other firms under invitation for bids No. 10PR-2JS-3000. For the reasons discussed below, we deny the protest.

The solicitation, issued by the General Services Administration (GSA) on September 25, 1981 for interior latex paint, restricted awards to products previously qualified for inclusion on the applicable Qualified Products List (QPL). The IFB required bidders to "insert * * * the name of the qualified source, the product designation, and the QPL test or qualification reference number of each product offered." The solicitation also warned bidders that any offer which did not properly identify the qualified product offered would be rejected as nonresponsive.

GSA found Norris' bid on various items of green and white interior latex paint nonresponsive for failure to enter the proper identification of each product offered. Specifically, Norris failed to list in its bid a product designation for the items and identified the paint being offered by a QPL test number applicable to yellow paint.

GSA argues that the yellow paint identified in Norris' bid by the QPL test number is materially different from the products required to be furnished by the solicitation. Further, there is no information in Norris' bid which would permit the agency to determine that the bidder intended to offer the required products. GSA concludes that the bid was therefore properly rejected as non-responsive.

Norris characterizes its failure to enter the proper identification of each product as a mere "clerical error" and a "superfluous requirement" which does not affect the responsiveness of its bid since GSA can ascertain Norris' properly qualified products from the use of conjunctive information available to the agency. Further, Norris argues that GSA should be estopped from rejecting that firm's bid as nonresponsive since it "is [a] fact that GSA had previously on a number of occasions accepted bids and awarded contracts to Norris with identical QPL test number discrepancies as contained in the bid in question."

We agree with GSA that the record establishes that the products listed in Norris' bid are materially different than the products called for in the solicitation. In this regard, the protester does not argue otherwise. Thus, Norris' bid falls short of an unequivocal offer to provide, without exception, the requested items in total conformance with the terms and specification requirements of the invitation. Stated somewhat differently, since Norris, albeit inadvertently, has offered a different product than that called for by the specification, its bid is nonresponsive. Nonresponsiveness may not be cured after bid opening. Chemray Coatings Corporation, B-201873, August 17, 1981, 81-2 CPD 146. Further, it has been the consistent position of this Office that the responsiveness of a bid, that is, the bidder's intention to comply with all IFB specifications, must be determined from the face of the bid itself at the time of bid opening. Transport Engineering Company, Inc., B-185609, July 6, 1976, 76-2 CPD 10. Therefore, Norris' reliance on the agency's possible use of conjunctive information to establish the responsiveness of its bid is misplaced. Chemray Coatings Corporation, supra.

With respect to Norris' argument concerning past practices of GSA, we have held that prior erroneous actions by contracting officials cannot estop an agency from rejecting a bid as nonresponsive where it was required to do so by law. See Forest Scientific, Inc., B-192827, B-192796, B-193062, February 9, 1979, 79-1 CPD 188; A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194. The protester argues that Forest Scientific, Inc., *supra*, is distinguishable. In that case, we essentially held that the submission of a bid without an authorized signature rendered the bid nonresponsive. Norris states that, while the bid in that case "lacked the very essence of [a] bid," Norris' bid merely contained an "innocuous and inadvertent clerical error" analogous to a payee's misspelled name on a "bank check." We disagree. A similar contention was made in Chemray Coatings Corporation, *supra*, where the agency specifically argued that the improper identification of a QPL product was waivable as a minor informality and was not an indication that a nonqualifying product would be supplied. Our Office rejected this argument and held that where, as here, a bidder offered a different product than that called for by the specification, the bid is nonresponsive and may not be cured after bid opening. See W.S. Jenks & Son, B-195861, November 25, 1979, 79-2 CPD 373.

For the foregoing reasons, the protest is denied.

Milton J. Fowler

Acting Comptroller General
of the United States