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DECISION



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

FILE: B-208263

DATE: December 27, 1982

MATTER OF: E.I. du Pont de Nemours & Company, Inc.

DIGEST:

1. Contracting officer properly deemed bid nonresponsive when bid materials described three equipment models, but failed to identify which model the bidder proposed to supply. When a bid is ambiguous as to what the bidder intends to offer, the bid is nonresponsive and must be rejected.
2. Bidder's failure to indicate which of three models in descriptive literature it was proposing to supply was neither a mere "inconsequential defect" under FPR § 1-2.405, which could be waived or corrected, nor a correctable error under FPR § 1-2.406, because a nonresponsive bid may not be corrected to make it responsive.

E.I. du Pont de Nemours & Company, Inc. (Du Pont), protests the rejection as nonresponsive of its low bid submitted in response to solicitation No. 46-S-ARS-82 issued by the Agricultural Research Service of the Department of Agriculture for a preparative ultracentrifuge.

The contract was awarded to the only other bidder, Beckman Instruments. The invitation for bids required the submittal of descriptive literature and Du Pont submitted literature which described three ultracentrifuge models. However, neither the descriptive literature nor any other Du Pont bid materials indicated which of the three ultracentrifuges Du Pont was proposing to furnish. As a consequence, the contracting officer rejected the bid.

Du Pont argues that only one of the ultracentrifuges described in its literature met the requirements of the solicitation and, therefore, the contracting officer easily could have inferred which ultracentrifuge was being offered. Du Pont further argues that it expressly identified the ultracentrifuge in its response to an identical previous solicitation, which was canceled when all bids were deemed

nonresponsive on grounds not related to the current protest. Finally, Du Pont cites various sections of the Federal Procurement Regulations (FPR) dealing with mistakes in bids and contends that it should have been given an opportunity to correct its bid or that its failure to specify which ultracentrifuge was being offered should have been deemed an inconsequential defect.

We deny the protest.

The "Solicitation Instructions and Conditions" included a requirement in clause 2(i) that "descriptive literature" be provided as part of a bid:

"The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to satisfy the requirements of the solicitation and to establish exactly what bidder proposed to furnish and what the Government would be binding itself to purchase by making an award."

Du Pont's bid was clearly not in compliance with this solicitation instruction. The literature Du Pont furnished was not "identified" to show the item in the bid to which it pertained and it did not establish exactly what Du Pont proposed to furnish and what the Government would have been binding itself to purchase by making an award.

Du Pont contends that this is an inconsequential, "technical non-conformity with a minor bid criterion." We do not agree. In a recent case, Amray, Inc., B-205037, February 9, 1982, 82-1 CPD 116, this Office considered and rejected a substantially similar argument:

"A review of Amray's bid shows that Amray merely inserted a total bid price in the bid schedule and attached its 'complete line' catalog of six electron microscopes, consisting of its Federal Supply Schedule contract catalog/price list and literature from suppliers of software. While Amray argues that only one of the six models met all of the

specifications, we believe this places too much of the burden on the contracting agency to go through the catalog and determine what item was intended to be offered by Amray. Moreover, there is no indication which of the six models Amray would deliver."

Also, we cannot agree with Du Pont's assertion that the "contracting officer knew well what product was being offered" because of what Du Pont had offered in response to a previous unawarded solicitation. Documents written in connection with a prior solicitation cannot be substituted to comply with a requirement in a present solicitation. Past actions of the procuring activity do not affect the responsiveness of the bid, which must be determined from the bid itself. Sunsav, Inc., B-205004.2, November 29, 1982, 82-2 CPD ____.

Du Pont contends that its failure to identify which of the ultracentrifuges it proposed to supply should have been waived or corrected as an "inconsequential defect" under FPR § 1-2.405 because it did not affect price, quantity, quality, or delivery. We do not agree. The three models described in Du Pont's descriptive literature differed markedly in quality. The ambiguity as to which model was being offered obviously affects quality.

Regarding Du Pont's arguments that the matter should be correctable under FPR § 1-2.406 as either an apparent clerical error or a mistake disclosed before award, we do not agree. FPR § 1-2.406-3(a) reads, in part:

"The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit correction of bids to make them responsive."

Du Pont's bid, as submitted, was ambiguous and thus nonresponsive. It may not now be amended to make it responsive. Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 CPD 360; Newport Ship Yard, Inc., B-191703, May 25, 1978, 78-1 CPD 400. This Office has

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consistently held that a nonresponsive bid may not be cured by explanation after bid opening. E.I. du Pont de Nemours & Company, Inc., B-208095, September 20, 1982, 82-2 CPD 245.

The protest is denied.

Milton J. Aowlan
for Comptroller General
of the United States