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Fitzmaurice
Proc I



DECISION

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

FILE: B-195962

DATE: October 31, 1979

MATTER OF: ^{DL603218}
Davlynne, Inc.

DIGEST:

[Protest of Bid Rejection Due to Proposed Equipment Not Being on Qualified Products List]

1. Protest against use of qualified products list (QPL) is untimely since it was not filed prior to bid opening.
2. QPL requirement in invitation for bids is material requirement that must be met at time of bid opening. Protester's failure to satisfy QPL requirement renders bid non-responsive even though protester allegedly satisfies more stringent standard.

Davlynne, Inc. (Davlynne), protests the rejection of its bid under invitation for bids (IFB) 8FCB-V2-50056 issued by the General Services Administration (GSA).
AGC 00017

The IFB requested bids for welding safety equipment and required that all equipment offered be qualified products. However, the equipment that Davlynne proposed to supply was not on the appropriate qualified products list (QPL). Moreover, it appears that this equipment had never been presented for testing so that it could be qualified and placed on the QPL. Consequently, the Davlynne bid was rejected as nonresponsive. But Davlynne contends that since its equipment meets what it believes to be a more stringent standard (the American National Standards Institute specification) and a Navy QPL specification, apparently for other welding safety equipment, its bid should not be rejected simply because it is not listed on the QPL in question. However, for the reasons indicated below, Davlynne's protest is without merit.

DL602915

AGC 00678

Under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1979), protests based upon alleged improprieties

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which are apparent prior to bid opening must be filed either with the contracting agency or our Office prior to bid opening in order to be considered timely filed. Here, Davlyne was, or should have been, aware of the QPL requirement prior to bid opening. Yet, its protest was not filed either with the contracting agency or our Office until more than a week after bid opening. Therefore, insofar as Davlyne's protest is against the use of a QPL in this particular solicitation, it is untimely and cannot be considered on the merits.

However, Davlyne also appears to be arguing that if a bidder's product meets a recognized standard more stringent than that needed to be listed on a QPL, then the product should be considered as fulfilling the QPL requirement, even though the Government has not had an opportunity to conduct tests of its own.

This part of Davlyne's protest falls within the ambit of our decisions which hold that where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's initial submission without obtaining a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. part 20 (1979). O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPD 267.

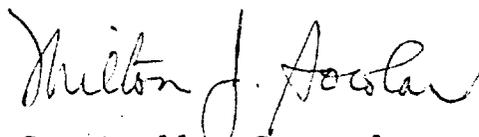
We have recognized that the purpose of the QPL system is to allow the efficient procurement of those types of products which require substantial testing in order to insure their compliance with specification requirements. D. Moody & Co., Inc.; Astronautics Corporation of America, 55 Comp. Gen. 1 (1975), 75-2 CPD 1. Consequently, the QPL system is intended to be used prior to and independent of any specific procurement action as a means of determining whether there is a product available that will meet the agency's specification requirements. The actual qualification process requires that the product be tested.

first for compliance with the specification and then, if found in compliance, to be identified on a list of qualified products. See, e.g., Defense Acquisition Regulation (DAR) § 1-1101(a) (1976 ed.).

We have held that when an IFB requires a qualified product, a bid that offers equipment which has not been tested and approved for listing in the appropriate QPL prior to bid opening is not responsive to a material requirement of the IFB and should be rejected. 43 Comp. Gen. 839 (1964); B-155358, January 4, 1964.

Here, Davlyne admits that its equipment has not been qualified, but in effect asks that the QPL requirement be waived since its equipment meets what it terms the more stringent standard of the American National Standards Institute specification. It also indicates that its product meets a Navy QPL specification, apparently for other welding safety equipment. However, as indicated above, a QPL requirement is a material requirement of the IFB and a failure to meet this requirement may not be waived after bids have been opened. B-155358, supra. A bidder cannot satisfy a QPL requirement by offering a product that meets some other standard no matter how much more stringent that other standard might be. It must meet the QPL requirement specified in the solicitation. Thus, Davlyne was required to have its equipment tested and approved for inclusion on the appropriate QPL prior to bid opening. Its failure to do so renders its bid nonresponsive.

The protest is dismissed in part and summarily denied in part.



For The Comptroller General
of the United States