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Roberts
Price II

DECISION



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

FILE: B-204673

DATE: December 31, 1981

MATTER OF: Wirt Inflatable Specialists, Inc.

DIGEST:

1. A qualified products list (QPL) requirement in an invitation for bids is a material requirement that must be met at the time of bid opening. Protester's failure to satisfy a QPL life preserver salt spray test requirement prior to bid opening renders its bid non-responsive.
2. Where protester relied on a Government quality assurance representative's (QAR) favorable QPL recommendation to higher authority as well as alleged QAR oral advice regarding QPL qualification tests, it did so at its own risk, and the Government is not estopped from declaring the bid nonresponsive for bidder's failure to offer a qualified product.

Wirt Inflatable Specialists, Inc., protests the rejection of its low bid under invitation for bids (IFB) No. DLA700-81-B-1646 issued by the Defense Logistics Agency (DLA). The IFB solicited bids for a quantity of inflatable life preservers and required that all items offered be qualified products. Since DLA determined that the life preserver Wirt proposed to supply was not listed or qualified to be listed in the appropriate qualified products list (QPL) at the time of bid opening, the Wirt bid was rejected as nonresponsive. In protesting this rejection, Wirt contends that even though its product was not listed in the QPL, it nevertheless was qualified for inclusion in the QPL at bid opening, and therefore should not have been rejected. Furthermore, Wirt submits that it relied on the written recommendation and oral advice of DLA quality assurance representative (QAR) concerning its life preserver's QPL listing or qualification, and therefore the Government should have

been estopped from rejecting Wirt's life preserver as nonresponsive. For the following reasons, however, we believe Wirt's protest is without merit.

The IFB included a "Qualified End Products" clause which stated, in pertinent part, that:

"Awards for any end items which are required to be qualified products will be made only when such items have been tested and are qualified for inclusion in a Qualified Products List * * * (whether or not actually included in the list) at the time set for opening of bids * * *."

In order to be listed in, or approved for listing in the appropriate QPL for life preservers, the IFB specified that the life preserver offered must be a product which has passed qualification tests listed in the specification, including a 100 hour salt spray test conducted on the life preserver's CO₂ inflation device, oral inflation valve, and all metal parts.

Shortly before the bid opening for this IFB, Wirt attempted to place its life preserver in the appropriate QPL. The record indicates that a QAR witnessed several life preserver qualification tests conducted by Wirt; and that, about a week prior to the bid opening, submitted a report recommending that Wirt's life preserver be listed in the QPL. However, the QAR's favorable recommendation was not accepted by the Department of Defense Standardization Program and Documents Branch (Branch), the activity responsible for preparing the life preserver QPL, because the QAR's report did not include test information from Wirt on the required salt spray tests. Wirt subsequently was informed by the Branch that no determination could be made as to whether or not its life preserver was qualified for listing in the QPL until a report on the salt spray test was submitted and considered. Thereafter, Wirt conducted the salt spray test, submitted the results, and its life preserver was determined to be qualified and was listed in the QPL. By the time Wirt's product had become qualified for QPL listing, however, the date for bid opening had passed.

In this regard, it is well-established that when a solicitation requires a qualified product, a bid that offers a product that has not been successfully tested and approved

for listing in the appropriate QPL prior to bid opening is not responsive to a material requirement of the IFB and must be rejected. The successful salt spray test completion after bid opening does not cure the nonresponsiveness of the bid, since the product was not qualified for QPL listing until after bid opening. See 51 Comp. Gen. 47 (1971).

Wirt argues that acceptable evidence of a successfully completed salt spray test was included in the QAR's favorable pre-bid opening report in the form of certificates of compliance from Wirt's subcontractors who manufactured the life preserver's oral valve assembly, and CO₂ bottle and holder. These certificates state that the items provided by the subcontractors comply with the applicable specifications, and in Wirt's view, implied subcontractor compliance with QPL test requirements. Consequently, Wirt contends that the Branch should have accepted the QAR's favorable recommendation and qualified the life preserver prior to bid opening. We are not persuaded by this argument.

We have reviewed the QAR's report to the Branch, and believe that the Branch acted properly and in accordance with the QPL specifications when it requested additional information from Wirt concerning the results of the salt spray test. In our opinion, the request for specific salt spray test results was reasonable and necessary for QPL qualification because the subcontractor certificates spoke only in general terms of complying with all specifications and they did not specify what tests, if any, were conducted; nor did they provide any test results. In this case, we believe specific test results were essential for QPL listing consideration since one of the specification's stated purposes for the salt spray test was to determine whether or not the life preserver's metal fittings showed appreciable corrosion damage or other damage after testing. Without test results, there would be no way to determine whether or not appreciable corrosion damage or other damage had occurred.

Accordingly, since Wirt's life preserver was not qualified at bid opening, Wirt's bid was properly rejected as nonresponsive.

Wirt also contends that DLA should have been estopped from rejecting its bid as nonresponsive because Wirt relied on the Government QAR's favorable written recommendation to the Branch that its life preserver should be qualified.

Furthermore, Wirt alleges that it relied on oral advice from the QAR that subcontractor certifications of compliance with the specifications satisfied the IFB's salt spray test requirement. We do not agree that the Government was estopped from rejecting Wirt's bid.

In the first instance, we believe that the QAR's favorable written recommendation of Wirt's life preserver to the Branch was clearly only a preliminary step toward qualification. By its own terms, the QAR's recommendation did not constitute qualification and therefore to the extent that Wirt relied upon it as such, it did so unreasonably and at its own risk.

To the extent that Wirt may have relied on any oral advice from the QAR regarding the effect of subcontractor certifications in satisfying the IFB's salt spray test requirements, this Office has held that where the IFB states that oral explanations are not binding, reliance of the bidder on an oral explanation is at the bidder's own risk and also that erroneous advice given by agency personnel cannot act to estop an agency from rejecting a nonresponsive bid as it is required to do so by law. Klean-Vu Maintenance Inc., B-194054, February 22, 1979, 79-1 CPD 126. Paragraph 3 of standard form 33A, which was incorporated by reference into the instant solicitation, clearly states that oral explanations or instructions given before award will not be binding and that any explanation desired regarding the meaning or interpretation of the solicitation must be requested in writing. Trident Industrial Products, Inc., B-199138, September 23, 1980, 80-2 CPD 222.

We conclude, therefore, that DLA properly rejected Wirt's bid. The fact that the Government, as Wirt contends, would save money by awarding to Wirt does not compel a different conclusion. To allow acceptance of a nonresponsive low bid would undermine the integrity of the system of competitive bidding despite the immediate advantage the Government may gain by a lower price in the particular procurement. Lewis Drywall Residential, Inc., B-205022, October 28, 1981, 81-2 CPD 360.

The protest is denied.

Harry R. Dan Clave
For The Comptroller General
of the United States