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

27295

FILE: B-212897; B-212897.2 **DATE:** January 30, 1984

MATTER OF: Elliott Company; Hardie-Tynes Manufacturing Company

DIGEST:

1. Bid submitted under qualified products list (QPL) procurement which fails to identify manufacturer and applicable test number in appropriate space in QPL clause required by DAR § 7-2003.6, but which identifies the manufacturer elsewhere, designates the manufacturer's qualified plant as the place of manufacture, and provides other information which permits the procuring agency to readily determine the missing items, is responsive to the IFB and the omissions may be waived as minor informalities.

2. Where, under qualified products list (QPL) procedures, the ownership of a qualified producer has changed, but there has been no change in plant location, personnel, or production processes of the qualified plant, that firm's failure to obtain reevaluation of its QPL status prior to bid opening as required by DAR § 7-2003.6 can be waived as a minor informality.

3. Procuring agency determination, based upon preaward survey, that qualified products list firm's plant, personnel and manufacturing processes are essentially those as originally qualified, so that complete reevaluation is not required, involves a matter of business judgment which will not be questioned absent a showing of fraud or bad faith.

Hardie-Tynes Manufacturing Company protests the proposed award of a contract to the Elliott Company, the low bidder under invitation for bids No. N00024-83-B-4555 issued by the Naval Sea Systems Command to procure forced draft blowers. Hardie-Tynes contends that because Elliott failed to indicate the intended product and test number, and because it failed to have its plant requalified after a change in ownership, its bid to supply a qualified products list (QPL) item was nonresponsive. We deny the protest.

The Navy issued the subject solicitation on July 18, 1983, seeking 25 horizontal, turbine-driven forced draft blowers for installation aboard aircraft carriers at time of overhaul, together with associated repair parts, documentation and engineering services. Because production of the blowers was restricted to firms included on QPL No. 18602, January 13, 1976, the solicitation contained the clause entitled "Qualified Products List" set forth in § 7-2003.6 of the Defense Acquisition Regulation (DAR). Two firms responded by the August 23, 1983 bid opening date, as follows:

Elliott Company	$6,620,125
Hardie-Tynes Mfg. Co.	6,959,600

The Navy proposes award to Elliott as the qualified producer offering the lowest price, but has withheld award pending resolution of Hardie-Tynes' protest.

Hardie-Tynes contends that Elliott's bid is nonresponsive because Elliott failed to indicate the item and test number in the appropriate space in the QPL clause. Moreover, Hardie-Tynes insists that Elliott's failure to have its qualification reevaluated after United Technology Corporation acquired its parent, the Carrier Corporation, rendered its bid nonresponsive because the QPL clause clearly calls for such an reevaluation after a change in ownership, and the acquisition of the entire Carrier organization was obviously a change in ownership. Finally, Hardie-Tynes argues that Elliott has so changed its manufacturing process since it was evaluated that reevaluation is required in any event.

A bidder's failure to indicate the identity of the product in its offering in such a manner as to permit the procuring agency to determine that its product is qualified must be considered a material omission rendering its bid nonresponsive. D. Moody & Co., Inc.; Astronautics Corp. of America, 55 Comp. Gen. 1 (1975), 75-2 CPD 1. However, where the procuring agency can easily determine these designations without any undue administrative burden, the bid is not rendered nonresponsive merely because the bidder failed to identify the item name and test number in the appropriate spaces in the QPL clause. Id.

Elliott's bid identified Elliott as the manufacturer, described the item to be furnished, designated its qualified plant in Jeanette, Pennsylvania as the place of manufacture, and identified the QPL list on which Elliott's test number appears. Thus, although Elliott failed to insert the item name and test number in the appropriate space in the QPL clause, other information contained in the bid enabled the Navy to readily determine the identity of the qualified product Elliott intended to furnish. Consequently, we believe that Elliott's bid sufficiently identified the product it was offering and its omission of the item name and test number may be regarded as a minor informality not rendering the bid nonresponsive. D. Moody & Co., Inc.; Astronautics Corp. of America, supra.

As to Hardie-Tynes' contention that the Navy was required to reevaluate Elliott's plant prior to the submission of bids because the ownership of Elliott Company changed since the plant was last qualified, the clause in question states:

> "Any change in location or ownership of the plant at which a previously approved product is, or was, manufactured requires reevaluation of the qualification. Such reevaluation must be accomplished prior to the bid opening date in the case of advertised procurements . . . . Failure of offerors to arrange for such reevaluation shall preclude consideration of their offers."

The Navy argues, however, that Hardie-Tynes' interpretation is overly-restrictive and does not comport with either the intent of the clause or how it is administered. The Navy contends that it is not required to review how a qualified plant's ownership may have changed, a most complex question for a publicly held corporation, nor is it required to analyze which of the many possible forms of corporate reorganization constitute a change in ownership. Rather, when a change of this type occurs, the Navy is only required to determine whether that change has impacted on the qualified producer's ability to manufacture the qualified product, i.e., whether these was a change in the manufacturing plant's location, technical personnel, product line or manufacturing techniques. In this regard, the Navy points out that under QPL procedures neither the corporation nor its parent is considered qualified, but only the particular plant or plants that have undergone qualification review. Thus, the focus of QPL approval is on the particular plant, not the ownership of the plant, the Navy insists.

The Navy further advises that its preaward survey of Elliott's Jeanette plant concluded:

> (a) The product is still being produced in the same plant.
>
> (b) The plant is still under the same basic management. Key personnel in Engineering and Quality Assurance still remain in place since the last FDB (Forced Draft Blower) contract.
>
> (c) The product is being manufactured under the same conditions as originally qualified except where the Government has originated changes in specifications and general advances in technology.
>
> (d) The product will meet the requirements and tests of the latest effective issue of MIL-F-18602 [the specification] as modified by this IFB.

Consequently, while the Navy admits that Elliott should have complied with the clause and sought reevaluation, it believes that Elliott's failure to do so under the specific circumstances of this protest should not render its bid nonresponsive.

In reaching this conclusion, the Navy relies upon our holding in 53 Comp. Gen. 249 (1973), which, we agree, is controlling here. That case first recognizes a prior case, B-161414, September 5, 1967, where we agreed with an agency determination that, under a prior version of the QPL clause, changes in both ownership and management at a plant producing a qualified product need not result in the loss of product qualification. We found, however, that the revised version of the clause, similar to the one here in question, need not result in the automatic rejection of a bid simply because there has been a change in the form of corporate ownership since qualification. Rather, we indicated that where there appears to have been a change in ownership, and the bidder has failed to have its qualified plant reevaluated prior to bid opening, the procuring agency should review the actual circumstances to determine whether the purported change in ownership made any difference as to those things which impact on the qualified product, i.e., production personnel, manufacturing processes and the like. Specifically, in that case we held that, where there is a change in ownership of a qualified plant:

> " . . . there is a possibility that with new management there may be a change in quality controls and procedures of that nature. Thus, reevaluation is appropriate in situations where a change in the circumstances of manufacture, such as the sale of a plant, is not merely a change in form, but rather is one in substance. Where there is merely a transfer of title to the plant facility and a change in a corporate name with no accompanying change in employees, products, manufacturing processes, location, or more, as in the present case, the reevaluation would be a useless exercise."

We concluded that although the bidder was nonresponsive to the OPL clause requirement, "it would be an overly technical application to apply the provision to a formal rather than a substantive change" and, accordingly, recommended that the bidder be considered for award despite its failure to seek reevaluation prior to bid opening.

This is consistent with our position of looking to the substance in other situations where changes in ownership are alleged to have affected prior product qualifications. For example, in Keco Industries, Inc., B-207114, August 23, 1982, 82-2 CPD 165, regarding waiver of first article testing, we concluded that, as long as the production facilities remained the same, the experience of a predecessor contractor could be considered in assessing the new contractor's qualification and that a mere change in ownership was not sufficient to divest the firm of its prior qualification. Moreover, we have long recognized that the qualified product system of procurement is inherently restrictive of competition. D. Moody & Co., Inc.;--Astronautics Corp. of America, supra. In these circumstances, we do not believe that the restrictive interpretation of the OPL clause urged by Hardie-Tynes, which would eliminate the low priced bid submitted by a qualified producer, is either required or in the government's interest.

Finally, Hardie-Tynes asserts that, taken together, fundamental changes have occurred in the ownership, management, workforce, business emphasis and work process at Elliott's Jeanette plant since it was qualified in 1976, which changes require requalification of the plant. In essence, Hardie-Tynes is disagreeing with the Navy's conclusion, based upon its preaward survey and the other information available to it, that the plant personnel, manufacturing process and product lines are essentially the same as those qualified in 1976.

These kinds of concerns are essentially matters of business judgment, which involve a high degree of discretion on the part of the procuring agency. In other areas which are based on business judgments, such as affirmative determinations of responsibility, we will interpose objection only where fraud or bad faith on the part of the contracting officials is shown. See Dixie Bag Corporation, B-210898.2, July 15, 1983, 83-2 CPD 97. We see no evidence of fraud in the record, however, and none has been alleged. Moreover, we have carefully reviewed the preaward survey and other materials in the file relating to Elliott's qualifications, and we see no reason to question the Navy's judgment that Elliott remains a qualified producer.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States