

5851

Skusko

DECISION



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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-200128

DATE: January 7, 1981

MATTER OF: International Salt Company

DIGEST:

1. Bid which included condition providing for delivery at quoted prices for period less than contract period required by invitation for bids is nonresponsive for failure to offer a firm-fixed price and may not be made responsive by either correction after bid opening, or reliance on alleged prior acceptances by contracting agency of similar nonconforming bids.
2. Where invitation for bids permitted use of either foreign or domestic product, failure of bids to acknowledge fact of foreign supply source as required by solicitation to facilitate proper price evaluation did not render bids nonresponsive.

International Salt Company (International Salt) protests the rejection of its low bid and the award of a contract for rock salt to Morton Salt, Division of Morton-Norwich, pursuant to invitation for bids (IFB) No. 0338-AA-68-0-0-HB issued by the Government of the District of Columbia (District).

The bid of International Salt was rejected as nonresponsive for failure to offer delivery at quoted prices for the entire contract period required by the IFB. International Salt contends that the rejection is improper because the District has previously accepted similar nonconforming bids. In addition, the protester contends that all bids except that of International Salt were nonresponsive for failure to specify that the salt offered was of foreign origin, as required by the IFB. The protester requests that its bid be reinstated and that the contract be awarded to International Salt or, in the alternative, that all

~~014066~~ 114118

bids be rejected as nonresponsive and the solicitation reissued.

The IFB required bids for a contract period from October 1, 1980, through September 30, 1981. However, the International Salt bid contained the following typewritten condition:

"We will protect our quoted prices on deliveries prior to and including July 31, 1981 * * *"

Bid responsiveness requires an unequivocal offer to provide without exception exactly what is required by the invitation at a firm-fixed price. Re Con Paving, Inc., B-198294, April 24, 1980, 80-1 CPD 297. Where a bidder qualifies a bid to protect itself from future price changes and the total price cannot be determined for bid evaluation, the bid must be rejected as non-responsive. Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183. Therefore, since the International Salt bid failed to offer a firm-fixed price for the entire contract period and precluded bid price evaluation, the District properly determined that the bid was nonresponsive.

After opening, International Salt claimed an inadvertent error in inserting the July 31 date instead of a compliant date. The company's request for acceptance of correction was denied. A nonresponsive bid may not be made responsive by explanation after bid opening, regardless of whether its failure to comply with IFB requirements was due to mistake, inadvertence, or any other cause. Southeastern Metal Fabrications, B-186750, September 21, 1976, 76-2 CPD 265; Fisher Klosterman, Inc., B-185106, March 9, 1976, 76-1 CPD 165. We, therefore, concur in the denial of the company's bid correction request.

Also without merit is the protester's contention that the rejection of its bid as nonresponsive was improper because of alleged previous waivers of similar nonconforming bids by the District. Although the contracting officer did not respond to this charge, its validity is irrelevant because prior erroneous actions

by contracting officials cannot estop the District from rejecting a nonresponsive bid since the law so requires. 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 finally contends that since all other bids were nonresponsive for failure to comply with the IFB requirement that bids state whether the product was of foreign origin, the solicitation should be reissued if its bid was properly rejected. Since the invitation permitted use of either domestic or foreign salt, the bids were not rendered nonresponsive by the bidders' failure to acknowledge use of salt of foreign origin. See 48 Comp. Gen. 142 (1968); and B-169279, June 1, 1970.

The purpose of this information did not go to the determination of the conformance of the bid to the material requirements of the solicitation. Rather, this information was requested to facilitate proper evaluation of bid prices with respect to the Buy American Act, which requires that a price differential be added to the contract price of articles, materials and supplies manufactured or substantially manufactured outside the United States and acquired for public use. 41 U.S.C. § 10a-d (1976). We note that a 6-percent differential was applied in the evaluation of the prices of those bids which offered salt of foreign supply source. Although the bid price of International Salt was lower than that of the awardee after addition of the price differential, that fact is irrelevant to the propriety of the award since the protester's bid was nonresponsive to the invitation and, therefore, required rejection. See Malott and Peterson-Grundy, Contractors; Vibra Whirl and Company, B-191887, January 2, 1979, 79-1 CPD 3.

The protest is denied.



For the Comptroller General
of the United States