

DECISION

12027 B. Jayakumar
THE COMPTROLLER GENERAL *Page II*
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-194329

DATE: November 15, 1979

MATTER OF: H. E. Crain

DIGEST:

- 229.03345*
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[Protest of Bid Rejection as Nonresponsive]
1. Where circumstances do not justify use of nondomestic construction material and domestic material is required, bid proposing use of only foreign construction material must be rejected where bidder fails to offer comparable domestic construction material.
 2. Alleged mistake in listing construction material as foreign rather than domestic in origin, rendering bid unacceptable, may not be corrected after opening since that would be inconsistent with principles of formal advertising by permitting bidder, after bid opening, to make bid acceptable.

H. E. Crain protests the rejection of its offer to perform road construction work in Yuma County, Arizona, as described in solicitation YA-S11-IFB9-11, issued by the Bureau of Land Management, Department of the Interior (Interior). We conclude that the bid properly was rejected. *AGC00008*

The project, known as the Ehrenberg-Oxbow Road Reconstruction, required in part that the contractor furnish and install 351 linear feet of culvert pipe. Crain's bid included a "Representations By Bidder Pursuant To 'Buy American Act'" form which identified the pipe intended to be used as a foreign construction material. The bid was rejected because award was required to be made on the basis of domestic pipe and because the bid did not contain an alternate price for comparable domestic construction material.

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Crain asserts that it mistakenly indicated that it intended to furnish foreign pipe, that in such circumstances submission of the "Representation" form (Bureau of Land Management Form 1510-31) was not required, and that the defect in its form in any event should have been waived as immaterial. Crain believes its bid was responsive because it complied with all material requirements of the IFB.

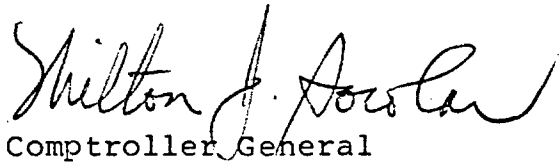
Interior views the bid as nonresponsive because Crain did not agree to furnish domestic construction materials, as required by the Buy American Act, 41 U.S.C. § 10(b) (1976). The Act, as implemented, requires that only domestic construction materials be used for the construction, alteration, or repair of public buildings or public works except as impractical, inconsistent with the public interest, or unreasonable as to cost. Federal Procurement Regulations (FPR) § 1-18.602 (1964 ed.). While Interior does not contest Crain's statement that it listed the pipe as foreign by mistake, it correctly points out that a mistake cannot be corrected if the bid as submitted is not eligible for award and the effect of correction is to make the bid acceptable for award. Bayshore Systems Corp., 56 Comp. Gen. 83 (1976), 76-2 CPD 395.

The solicitation required that the contractor agree to use only domestic construction material in performance of the contract, except for nondomestic material listed in the contract. See Standard Form 23-A (Rev. 4-75), General Provisions (construction contract), paragraph 24. The solicitation specifically exempted certain materials and provided that bids offering use of additional nondomestic construction material identified by the bidder would be acceptable for award if the Government determined that use of comparable domestic construction material is impracticable or would unreasonably increase the cost or that domestic construction material is unavailable. Bidders were warned to offer prices for available comparable domestic construction material to avoid the possibility of bid rejection were a listed nondomestic construction material found to be unacceptable.

Crain's bid, as submitted, evidences its intention to furnish only nondomestic culvert pipe. Interior determined, however, that domestic pipe was available and at less cost. Consequently, Crain's bid offering only foreign pipe could not be accepted. To allow Crain to explain after bid opening that it intended to offer something else would be manifestly unfair and inconsistent with the principles of formal advertising. 51 Comp. Gen. 814, 818 (1972). A mistake may be corrected only if the bidder is otherwise entitled to award. Similarly, viewing Crain's indication that it intended to furnish foreign pipe as immaterial would also be inconsistent with principles of formal advertising since that indication went to the substance of what Crain was legally committing itself to furnish. Compare 48 Comp. Gen. 142 (1968), permitting a bidder to change its offer from a domestic to a foreign supply product which, unlike the present case, does not require that the bidder assume a new or additional obligation beyond what he has already agreed to assume.

We conclude that Crain's bid, which as submitted evidences an intention to furnish only nondomestic culvert pipe, was properly rejected.

The protest is denied.



For The Comptroller General
of the United States