

Transportation

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DECISION



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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-197942

DATE: May 9, 1980

MATTER OF: Wilson & Hayes, Inc.

DIGEST:

Letter bid on total small business set-aside which did not contain required representation that items furnished would be manufactured by domestic small business concern properly was rejected as nonresponsive.

Wilson & Hayes, Inc. (Wilson & Hayes) protests the rejection of its "letter bid" as nonresponsive under invitation for bids (IFB) N00104-79-B-1124, a small business set-aside issued by the Navy Ships Parts Control Center for 89 flat top desks.

The bid, which was submitted on the firm's stationery, cited the solicitation number and the bid opening date; referenced the quantity of desks solicited, the military specification, the drawing and the National Stock numbers; stated a unit price, delivery and discount terms; and included the words "small business." The reason for the rejection was that the letter bid did not state that it was subject to all the terms and conditions of the invitation. The protester contends that the signing of a formal contract by a bidder in itself binds the firm to perform in accordance with a solicitation's terms and conditions, and thus the failure to include the referenced statement in a letter bid is only a minor informality.

The protest is without legal merit.

It is the Government's acceptance of a bid that sets the parties' legal obligations, not the bidder's subsequent signing of a contract, as contended by the protester. 49 Comp. Gen. 553, 556 (1970). A

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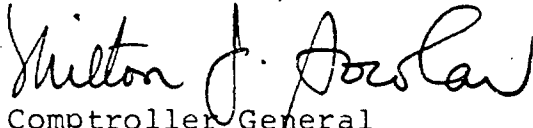
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contract to be awarded by formal advertising procedures generally does not contemplate a separate formal agreement, since the terms and conditions are fixed in the bid which is the agreement if accepted by the Government. See Redifon Computers Limited--Reconsideration, B-186691, June 30, 1977, 77-1 CPD 463. Thus, to be considered for award a bid must be "responsive," i.e., as submitted it must represent an offer to perform the exact thing called for in the invitation. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214, 217 (1979), 79-1 CPD 20. Whether a bidder intends to be so bound by its bid is irrelevant if that intention is not apparent from the bid itself. The Entwistle Company, B-192990, February 15, 1979, 79-1 CPD 112.

Implementing those principles, Defense Acquisition Regulation § 2-302(c) (1976 ed.) provides that a letter bid, or one submitted on the bidder's own bid form, may be considered only if the bid reflects the bidder's acceptance of all the terms and conditions of the invitation, and award on the bid thus would result in a binding contract on that basis. We have, however, recognized that such acceptance need not be explicit. UWD Manufacturing Incorporated, B-195712, November 29, 1979, 79-2 CPD 380.

Nevertheless, a letter bid is not acceptable if it omits material information which must be submitted with a bid. For example, on this total small business set-aside bidders were required to represent that the items to be furnished would be manufactured by a domestic small business concern, but no representation to that effect was made in Wilson & Hayes' letter bid. We have held that such an omission from a letter bid alone necessitates its rejection as nonresponsive. UWD Manufacturing Incorporated, supra.

The protest is denied.


For the Comptroller General
of the United States