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**DECISION**



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

**FILE:** B-210265

**DATE:** March 14, 1983

**MATTER OF:** Ace Metal Fabricators, Inc.

**DIGEST:**

Bid received on a total small business set-aside solicitation which failed to indicate whether bidder would furnish products manufactured or produced by small business was properly rejected as nonresponsive.

Invitation for bids (IFB) No. DLA400-82-B-6627 was issued by the Defense Logistics Agency, Defense General Supply Center (DGSC), Richmond, Virginia, as a 100-percent small business set-aside with a labor surplus area preference. Bid opening was on November 2, 1982. The low bidder, Ace Metal Fabricators, Inc. (Ace Metal), protests the rejection of its telegraphic bid submitted prior to bid opening and its formal bid document received by DGSC on November 10, 1982.

The protest is denied.

Ace Metal's telegraphic bid, in pertinent part, read as follows:

"Subject to all terms conditions and provisions of Solicitation DLA400-82-B-6627, the following offer is made:

\* \* \* \* \*

"The price is subject to 1/4 percent time discount for payment within 20 days

"Formal bid follows."

According to Ace Metal, its bid was rejected as nonresponsive because of the omissions from its telegraphic bid of representations as to size status or place of manufacture, which were required by the solicitation. Ace Metal argues that the bid document contained clauses indicating that Ace Metal was a small business firm located in a labor

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surplus area and that it intended to manufacture the item on which it bid. Ace Metal also contends that the omissions in its telegraphic bid were minor informalities or irregularities which could be waived pursuant to section 2-405 of the Defense Acquisition Regulation (DAR) (1976 ed.).

Telegraphic bids were permitted by section L12 of the solicitation, which provides as follows:

"(A) TELEGRAPHIC OFFER (INCLUDING WESTERN UNION MAILGRAMS) MAY BE SUBMITTED IN RESPONSE TO THIS SOLICITATION. TELEGRAPHIC OFFERS MUST BE RECEIVED IN THIS OFFICE PRIOR TO THE TIME SPECIFIED FOR RECEIPT OF OFFERS. SUCH OFFERS MUST INCLUDE THE ITEM OR SUB-ITEMS, QUANTITIES AND UNIT PRICES FOR WHICH THE OFFER IS SUBMITTED AND THE TIME AND PLACE OF DELIVERY; AND MUST CONTAIN ALL THE REPRESENTATIONS AND OTHER INFORMATION REQUIRED BY THE SOLICITATION TOGETHER WITH A STATEMENT THAT THE OFFEROR AGREES TO ALL THE TERMS, CONDITIONS AND THE PROVISIONS OF THE SOLICITATION. FAILURE TO FURNISH, IN THE TELEGRAPHIC OFFER, THE REPRESENTATIONS AND INFORMATION REQUIRED BY THE SOLICITATION MAY NECESSITATE REJECTION OF THE OFFER. SIGNED COPIES OF THE SOLICITATION MUST BE FURNISHED IN CONFIRMATION OF THE TELEGRAPHIC OFFER WITHIN 10 DAYS OF THE SOLICITATION OPENING/CLOSING DATE."

Section L12(B) of the solicitation required the bidder to state whether it was or was not a small business and to indicate the place of performance. We have held that information concerning the place of performance is not for the purpose of assessing the responsiveness of a bid, but to determine the bidder's eligibility for the labor surplus area evaluation preference. South Jersey Clothing Co.; Catania Clothing Corp., B-204531, B-204531.2, February 4, 1982, 82-1 CPD 88. Therefore, even though the place of performance was omitted from Ace's bid, the bid was not rendered nonresponsive because of this omission. Furthermore, we are advised that even without the labor surplus area preference, Ace Metal is the low bidder.

Moreover, under DAR § 2-405(ii), failure to make a representation concerning size status may be waived as a minor informality or irregularity. See Shipco General, Inc., B-204259, August 20, 1981, 81-2 CPD 161. However, it has been held by this Office that a bid on a total small

business set-aside which, as in the present case, fails to indicate the intention of the bidder to furnish products manufactured or produced by small business concerns must be rejected as nonresponsive. See Mil-Pac, Inc., B-181711, October 8, 1974, 74-2 CPD 196. The formal bid could not be used to cure the deficiency in Ace Metal's telegraphic bid since the formal bid was not received until after bid opening and a nonresponsive bid cannot be made responsive after bid opening. See Prestex, Inc., B-195251.2, December 17, 1979, 79-2 CPD 411.

Accordingly, the rejection of Ace Metal's bid was proper.

Since it is clear from the protester's initial submission that its protest is without merit, we have reached our decision without obtaining an agency report on the matter. See Introl Corporation, B-206012, February 24, 1982, 82-1 CPD 164.

The protest is summarily denied.

*for*   
Comptroller General  
of the United States