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DECISION



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

FILE: B-211675

DATE: June 1, 1983

MATTER OF: Mactek Industries Corp.

DIGEST:

Where small business firm bidding on items set aside for small business represents in the bid that the supplies to be furnished will not be manufactured or produced by small business, the bid is nonresponsive with respect to the set-aside items.

Mactek Industries Corp. (MIC) protests the Department of the Army's rejection of its bid as nonresponsive under invitation for bids (IFB) DAAE07-83-B-H336, a small business set-aside. The Army awarded a contract to the third low bidder and MIC requests that this Office investigate the matter.

We find no legal merit to the protest.

In its bid, MIC, a small business firm, certified under the standard form 33 representation that the supplies to be furnished would not be manufactured or produced by a small business concern, which is contrary to the set-aside requirements and the Army determined MIC nonresponsive.

A responsive bid is one that on its face is an offer to perform, without exception, the exact thing called for in the invitation. The Government's acceptance of the offer effectively binds the bidder to perform according to the invitation's requirements. See Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20.

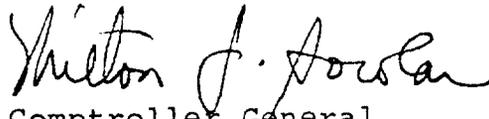
A bid on a total small business set-aside must establish the bidder's intention to furnish only products manufactured or produced by small business for the bid to be responsive. See Culligan, Inc., 58 Comp. Gen. 307, 309 (1979), 79-1 CPD 149. Otherwise, the Government's acceptance of the bid would not legally obligate the firm to furnish small business products consistent with the set-aside. Rather, the contractor would be free to provide the supplies from either small or large business manufacturers as its private business interest might dictate. See Jack Young Associates, Inc., B-195531, September 20, 1979, 79-2 CPD

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Thus, the Army's rejection of MIC's bid as nonresponsive because MIC's bid did not legally obligate MIC to furnish a small business product was proper.

With regard to the protester's observation that a contract award to the next low responsive, responsible bidder will result in a higher cost to the Government, it has been our position that the public interest in strictly maintaining the competitive bidding procedures required by law outweighs any pecuniary advantage which the Government might gain in a particular case by a violation of the rules. See Ace Art Company, B-202353, April 1, 1981, 81-1 CPD 252.

The protest is summarily denied since it is clear from the initial submission that it lacks legal merit.

for 
Comptroller General
of the United States