

DECISION



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

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FILE: B-216639

DATE: November 13, 1984

MATTER OF: Industrial Design Laboratories, Inc.

DIGEST:

1. Protest presenting the same issue that was resolved adversely to the protester in a recent protest under a different procurement is summarily denied since it is clear on its face that it has no legal merit.
2. Invitation requirement that the bidder designate the place of performance if it is other than the bidder's address as stated in the bid generally relates to bidder responsibility, not bid responsiveness, so that the designation may be made after bid opening.
3. Bidder's failure to specify f.o.b. origin point does not render the bid nonresponsive where the invitation excludes transportation costs from price evaluation, since the omission had no effect on the competitive standing of the bidders.

Industrial Design Laboratories, Inc. (IDL) protests award to any bidder other than itself under invitation for bids (IFB) No. DAAA09-84-B-0753 which was issued by the Department of the Army for electric heaters for various armored combat vehicles. IDL contends that the low bidder, the Confederated Salish and Kootenai Tribes, is a non-existent entity and that an affirmative determination of its responsibility therefore would be such gross error as to be tantamount to constructive fraud. IDL also argues that the low bid is nonresponsive.

We summarily deny the protest.

The bases for the protester's responsibility arguments are the same as those presented and resolved adversely to

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IDL in a recent protest against the proposed award of identical items to the same low bidder but in a different procurement. See Industrial Design Laboratories, Inc., B-215162, Oct. 16, 1984, 64 Comp. Gen. _____, 84-2 CPD ¶ _____. We found that the Tribes' existence and identity were clear and that an affirmative determination of responsibility was reasonable. We therefore find no legal merit to this aspect of the current protest.

IDL contends that the Tribes' bid was nonresponsive because it designated no place of production, or location for purposes of f.o.b. origin delivery, as required, but only specified a post office box in Roan Lake, Montana in providing the bidder's name and address.

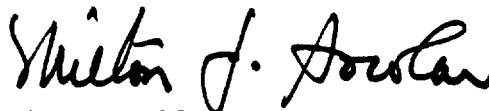
We reject IDL's contention. Clause K-6 of the IFB, entitled "Place of Performance," required the bidder to indicate whether it intended to use any plants or facilities located at addresses other than the address the bidder indicated in its bid. The Tribes checked the box indicating that the bidder did not intend to use any other such plants or facilities, and therefore did not provide any other information under this provision. While a requirement to designate the place of performance can relate to bid responsiveness in those rare cases where the government has a material need to have performance take place at a certain location, such a requirement usually relates to bidder responsibility. See Keco Industries, Inc., B-199934, Sept. 22, 1980, 80-2 CPD ¶ 219. We find no indication in the record here that the government had any need to have performance take place at any particular location. Therefore, the matter is one of responsibility, so that information with regard to the place of performance could be furnished after bid opening. See Continental Telephone of California, B-213255, Apr. 17, 1984, 84-1 CPD ¶ 428.

As to the Tribes' failure to designate the f.o.b. origin point, the IFB incorporated the clause at section 52.247-50 of the Federal Acquisition Regulation, which provided that transportation costs were not an evaluation factor for award. Therefore the Tribes' omission did not affect the competitive standing of the bidders and could be waived without being prejudicial to the other bidders.

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See Champion Road Machinery International Corp., B-200678, July 13, 1981, 81-2 CPD ¶ 27. Since IDL has not shown that the Tribes otherwise took exception to any material solicitation terms, which is the test of a responsive bid, Ven-Tel, Inc., B-203397, July 1, 1981, 81-2 CPD ¶ 3, we have no reason to question the Army's finding that the bid was responsive.

The protest is summarily denied.

for 
Comptroller General
of the United States