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PL-30682

DECISION



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

FILE: B-217307 **DATE:** March 13, 1985
MATTER OF: Jersey Maid Distributors Inc.

DIGEST:

1. How a bidder intends to meet its obligations if awarded an advertised contract involves bidder responsibility, which is determined as of the time of contract award. Low bidder that initially represented it would not use facilities at other than its own address therefore properly was permitted, after bid opening, to change its approach to performance by representing that it in fact would use other, listed, facilities.
2. Low bidder's failure to complete standard representations and certifications on the bid form constitutes a minor irregularity and thus is not a basis to reject the bid.

Jersey Maid Distributors, Inc. protests award to O'Boyles Ice Cream Co., Inc. of a contract under invitation for bids (IFB) No. DLA13H-84-B-9363 issued by the Defense Logistics Agency (DLA) for the supply of milk and ice cream products to Fort Dix and to McGuire Air Force Base, New Jersey.

We deny the protest.

O'Boyles submitted the lowest bid on 5 of 39 items. On page 25 of the IFB, where a bidder was to list any places of performance other than the facilities at the bidder's own address, O'Boyles indicated that it did not intend to use sources other than its own. On pages 26 and 27, O'Boyles failed to complete various standard representations regarding such matters as mailing address for payments, affirmative action compliance, and business organization type. The contracting officer permitted O'Boyles to furnish the information missing from pages 26 and 27 after bid opening. Also after bid opening, O'Boyles named sources of supply for the items, and was awarded the contract on that basis.

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Jersey Maid complains about O'Boyles' failure to list its sources of supply in the bid as originally submitted. The protester contends that such failure deprives the government of the ability to approve the sources before award, and permits a low bidder like O'Boyles, having learned a competitor's sources at bid opening, to approach them later and secure better prices than they quoted the competitor. Jersey Maid also protests the fact that DLA allowed O'Boyles to complete pages 26 and 27 after bid opening, rather than reject the bid.

We initially point out that the clause on page 25 required a bidder to list performance locations only if the bidder represented that it intended to use facilities at other than its own address. Since O'Boyles represented that it did not intend to use facilities other than its own, there was nothing wrong with the bid as submitted in this respect. Moreover, how a bidder intends to meet its obligations if awarded an advertised contract involves bidder responsibility, which is determined as of the time of award rather than at bid opening. Therefore, there generally is nothing improper with a bidder's altering, before award, how it intends to perform or otherwise improving its position to perform. See A-1 Pure Ice Co., B-215215, Sept. 25, 1984, 84-2 C.P.D. ¶ 357. DLA, consequently, properly allowed O'Boyles to furnish information after bid opening on how it would perform and to change its original approach to performance. So long as O'Boyles was judged capable, at the time of award, of performing the contract as proposed, the firm was entitled to the award as the low responsive, responsible bidder. We note that, notwithstanding Jersey Maid's concern about O'Boyles approaching Jersey Maid's named sources, the sources ultimately listed by O'Boyles were other than those listed by Jersey Maid.

With respect to O'Boyles failure to complete the various standard representations and certifications on the bid form, we have held that because such completion generally is not required to determine whether a bid meets the requirements of the specifications, failure to complete them constitutes a minor informality which may be waived and does

not affect the responsiveness of the bid as submitted.
Robert McMullan & Son, Inc., B-215690, July 23, 1984, 84-2
C.P.D. ¶ 92. The fact that O'Boyles had not completed the
items on pages 26 and 27 before bid opening therefore did
not require rejection of the bid.

The protest is denied.


Harry R. Van Cleve
General Counsel