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DECISION



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

FILE:

B-218423

DATE: April 17, 1985

MATTER OF:

Bowen Machine Products, Inc.

DIGEST:

1. Protest of the rejection of a bid submitted in response to a total small business set-aside because of its failure to indicate that all supplies would be produced by a small business is dismissed since such a bid does not obligate the contractor to provide supplies produced by a small business concern and therefore, the purpose of the total set-aside could be defeated.
2. Protest that the "Small Business Concern Representation" clause in the solicitation is ambiguous and should be rewritten is dismissed as untimely since it pertains to an alleged deficiency apparent on the face of the solicitation and was not protested prior to bid opening.

Bowen Machine Products, Inc. protests the rejection of its bid under invitation for bids (IFB) No. DAAA09-84-B-0982, issued by the Department of the Army as a total small business set-aside. We dismiss the protest.

Bowen states that the Army informed it that its bid would be rejected because in response to the "Small Business Concern Representation" clause in the IFB, Bowen, a small business firm, indicated that not all supplies to be furnished would be manufactured or produced by a small business. Bowen contends that even though only 10 percent of the total value of the items would be obtained from large businesses, it could not comply with the literal wording of the clause unless it indicated that not all supplies would be produced by small businesses. Bowen contends that the clause is ambiguous and should be rewritten.

The Army has informed us that Bowen's bid was, in fact, rejected as nonresponsive.

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A bid on a total small business set-aside must establish the bidder's intention to furnish supplies manufactured or produced by small business concerns for the bid to be responsive. Mactek Industries Corp, B-211675, June 1, 1983, 83-1 CPD ¶ 592. Otherwise, the small business contractor could defeat the purpose of the set-aside program by providing supplies from either small or large business firms as its own interests might dictate. See DuHadaway Tool and Die Shop, Inc., B-216082, Aug. 29, 1984, 84-2 CPD ¶ 239. While a small business may subcontract with a large business under a total small business set-aside contract, the small business must make a significant contribution to the manufacture of the goods, and its obligation to do so must be apparent from the bid itself. See Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD ¶ 149. Since Bowen indicated in its bid that the items it intended to supply would not be manufactured by a small business, the Army properly rejected the bid as nonresponsive.

We will not consider Bowen's contention that the small business representation clause in the IFB was ambiguous and should be rewritten. The clause in question is a standard clause and its proper construction is well-established. See Culligan, Inc., *supra*. Accordingly, we believe that the protest concerns an apparent solicitation impropriety and is untimely because it was not filed prior to bid opening. See GAO Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985).

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel