

**DECISION**



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

**FILE:** B-220705

**DATE:** October 22, 1985

**MATTER OF:** Teco, Inc.

**DIGEST:**

Bid under small business set-aside which fails to indicate that supplies to be furnished will be manufactured or produced by a small business concern is nonresponsive. Moreover, information obtained after bid opening may not be used to make bid responsive.

Teco, Inc., protests the rejection of its bid as nonresponsive under solicitation No. DAAE07-85-B-J446, a total small business set-aside issued by the United States Army Tank-Automotive Command for the procurement of 38 aerial lift devices. The bid was rejected because, although Teco represented in its bid that it was a small business concern, the firm failed to indicate that the supplies to be furnished would be manufactured or produced by a small business.

We dismiss the protest.

The bidding certification concerning the bidder's obligation to furnish products manufactured by a small business concern is a matter of bid responsiveness because it involves a performance commitment, *i.e.*, to furnish small business products. Thus, a bidder's intention to furnish such products must be established at the time of bid opening. See J-MAR Metal Fabricating Co., B-217224, Mar. 21, 1985, 85-1 C.P.D. ¶ 329. Otherwise, if the bid were accepted as submitted, the small business contractor would be free to provide the supplies from either small or large business manufacturers as its private business interests might dictate, thus defeating the intent of the set-aside program. See Hauser Products Incorporated, B-218140, Feb. 22, 1985, 85-1 C.P.D. ¶ 227.

Teco's failure to indicate in its bid that the products to be furnished would be manufactured by a small business thus constituted a failure on Teco's part to submit a binding promise to meet the small business set-aside

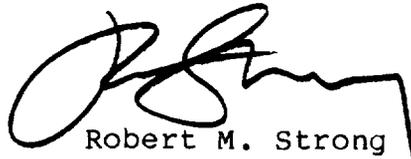
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requirement. Therefore, its bid properly was found nonresponsive. See Hanson Industrial Products, B-218723, et al., May 9, 1985, 85-1 C.P.D. ¶ 521.

Teco contends that the contracting officer nevertheless was aware of its alleged intention to furnish small business products because (1) subsequent to bid opening a preaward survey was conducted at which time production and delivery, among other things, were discussed, and (2) Teco is currently working on two other contracts for the same item.

Postopening explanations, however, cannot be used to make a nonresponsive bid responsive even if, as here, the government could obtain a lower price by accepting the bid. See Basic Marine, Inc., B-215236, June 5, 1984, 84-1 C.P.D. ¶ 603. Further, regardless of Teco's status under its other two contracts, the fact remains that its failure to certify that it would supply items manufactured by a small business under the present contract would, if the bid were accepted as submitted, leave the firm free to supply an item from a source other than a small business if it chose to do so. See Automatic Limited, B-214997, Nov. 15, 1984, 84-2 C.P.D. ¶ 535.

The protest is dismissed.



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