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DECISION



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

FILE: B-219450

DATE: October 28, 1985

MATTER OF: Turco Disposal, Inc.

DIGEST:

1. Rejection of a bid based on a bidder's statements after bid opening that it could not obtain the required equipment needed to start contract performance on time is proper.
2. Referral of a bid rejection to SBA under the certificate of competency (COC) procedure would be a meaningless act where the bidder indicated it could not start contract performance on time and only wanted an extension of the contract starting date. SBA has no authority to grant an extension of the contract starting date under the COC procedure.

Turco Disposal, Inc. (Turco), protests the Department of the Navy's rejection of its low bid for refuse disposal services under invitation for bids (IFB) No. N62474-85-B-0026 issued by the Marine Corps Air Station, Yuma, Arizona (Navy). The Navy rejected the bid after Turco indicated that it could not begin performance earlier than 1 month after the July 1, 1985, scheduled starting date called for in the IFB. Turco notified the Navy that it would not be able to obtain IFB-required equipment (4-cubic-yard refuse containers) from its supplier in time to meet the starting date. It protests the Navy's refusal to award Turco a contract based on an extended starting date.

We deny the protest.

Turco contends that its problem with meeting the July 1 starting date arose because of a change in the bid opening date. The IFB originally specified bid opening for June 5. On June 3, Navy revised the IFB specifications, and extended the bid opening date to June 13. The July 1 starting date for performance, however, remained unchanged. Turco explains that it discovered after bid opening that as a

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result of the change it could not obtain the specified containers from its supplier prior to July 1, and that it also tried to buy the containers from the incumbent contractor, but the incumbent refused to sell them. Turco blames the Navy for its problem, and argues that the Navy should have extended its existing contract, and postponed performance under the replacement contract, while Turco obtained the necessary containers from its supplier.

We recognize that the Navy did not allow much time between bid opening and the start of contract performance. Turco, however, did not request an extension in the contract starting date, or otherwise indicate to the Navy that it needed additional time to obtain containers until after bids were opened on June 13. Turco should have ascertained before, not after, submitting its bid whether it was able to obtain the containers in time to start performance.

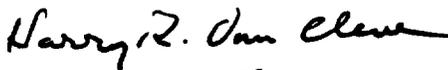
Once bids were opened, the Navy could not properly have made award to Turco based on an August 1, starting date. The IFB specified that performance was to start July 1, and bids were solicited on that basis. It would have been unfair to the other bidders to have awarded Turco a contract based on an August starting date. Tennessee Valley Service Co., 57 Comp. Gen. 125 (1977), 77-2 C.P.D. ¶ 442.

As a practical matter, Navy had no choice but to reject Turco's bid. While Turco in its bid promised to start performance on July 1, the Navy had good reason to believe that in fact Turco would not begin performance on July 1. Clearly an award to Turco in these circumstances would not have been advantageous. We therefore think Navy's rejection of Turco's bid was reasonable.

It appears to us, however, that technically Navy was required to refer its rejection of Turco's bid to the Small Business Administration (SBA) for consideration under the Certificate of Competency (COC) procedure, since Turco was a small business bidder. Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.602 (1984). A bidder's ability or willingness to perform is a matter of bidder responsibility. FAR, 48 C.F.R. § 9-104 (1984). We are not persuaded otherwise by the Navy's argument that Turco's post-bid opening statements should be viewed simply as a repudiation of its bid. Turco was willing to perform the contract; it only wanted to start performance later.

On the other hand, we agree with Navy that a COC referral under these facts would have been meaningless. Turco has not argued that it could have obtained the required equipment by July 1. It only wanted the contract starting date extended. Clearly, SBA had no authority to grant such a request under the COC procedure. Under the circumstances, Navy's failure to refer Turco's bid to SBA did not prejudice Turco.

Protest denied.


Harry R. Van Cleve
General Counsel