



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Telelect, Inc.
File: B-224474
Date: September 25, 1986

DIGEST

Bid on a total small business set-aside, which indicates that all supplies to be furnished will not be the product of small businesses, must be rejected as nonresponsive. The bidder otherwise would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside program.

DECISION

Telelect, Inc. (Telelect) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DAAE07-86-B-J201, a total small business set-aside, issued by the United States Army Tank-Automotive Command (TACOM), Warren, Michigan, for air transportable and rear mounted derrick trucks.

We deny the protest.

The IFB contained the standard Small Business Concern Representation provision set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219-1 (1985). In addition, it contained a note stating that the term supplies as used in that FAR provision refers to the actual end item(s) to be delivered under the contract, as distinguished from components or material used in the manufacture of the item. TACOM rejected Telelect's bid as nonresponsive because it certified that it was a small business but it also certified that not all supplies would be furnished by a small business.

A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. FAR, 48 C.F.R. § 14.301. The certification concerning the bidder's obligation to furnish products manufactured by a small

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business concern is a matter of bid responsiveness which cannot be waived 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. 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 interest might dictate, thus defeating the intent of the set-aside program. See The W.H. Smith Hardware Company, B-221087, Dec. 4, 1985, 85-2 C.P.D. ¶ 627.

Telelect essentially argues that either its bid was responsive or the IFB was ambiguous. Telelect advises that it is a small business which manufactures and attaches derricks to trucks. These trucks are manufactured by General Motors and Navistar International Harvester, which are large businesses. Telelect contends that the actual end item being procured under the IFB was a truck and not the modification that it intended to make to the truck. To support this contention, Telelect points out that the word truck was used extensively throughout the IFB, that the warranty called for a commercial vehicle, and that the Standard Industrial Classification (SIC) Code 3711 utilized in the IFB was for manufacturing motor vehicles. Telelect argues that the IFB also should have contained SIC No. 3714, which is for motor vehicle parts and accessories if the truck with derrick parts was the actual end item under the IFB. Interpreting actual end item to mean truck, Telelect contends that its bid was responsive because the truck was being manufactured by a large business. Further, Telelect states that any small business bidder that was using a large business for the truck would be nonresponsive if it checked that all supplies would be furnished by a small business. Telelect further contends that any other interpretation of actual end item means that the IFB was ambiguous.

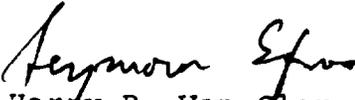
The mere allegation that something is ambiguous does not make it so. Terms may be somewhat confusing without constituting an ambiguity, provided an application of reason would serve to remove the doubt. Thus, an ambiguity exists only if two or more reasonable interpretations are possible. J. R. Cheshier Janitorial, B-219550, Oct. 23, 1985, 85-2 C.P.D. ¶ 445. We find that Telelect has not met its burden of proving that the specifications lack sufficient clarity. The alleged ambiguity relating to the actual end item to be furnished under the contract does not exist. A solicitation must be read as a whole and in a manner that gives effect to all provisions in it. Id.

Here, as noted above, the IFB advised that the term supplies refers to the actual end item(s) to be delivered under the contract, as distinguished from component parts. Notwithstanding the use of the word vehicle or truck in the IFB, it is apparent that the IFB solicited bids to supply a truck with a hydraulically operated rotating derrick. In this connection, one of the IFB's item descriptions describes the product being purchased as "truck, maintenance, with rotating hydraulic derrick, air transportable, diesel engine driven, 39,500 pounds, GVM, 6x4, commercial." Clearly, the actual end item is the completed product and not just the truck which, according to the item description, can only be reasonably interpreted to be a component part of the completed end item being delivered under the contract. See Ginter Welding Inc., B-218894, May 29, 1985, 85-1 C.P.D. ¶ 612. TACOM advises that significant and substantial modifications and additions to the truck chassis must be made by the small business "body builder" before it is compliant with the specifications and is suitable as a deliverable end item.

Moreover, we are unpersuaded that the IFB's SIC number was utilized improperly. SIC No. 3711 states that it applies to "establishments primarily engaged in manufacturing or assembling complete passenger automobiles, trucks, commercial cars and buses (except trackless trolleys--Industry 3743), and special purpose motor vehicles." We find that TACOM could have reasonably interpreted the derrick truck to be a special purpose motor vehicle and therefore we find that the use of an additional SIC would have been inappropriate. Because we find that "supplies" means the end item, not merely the truck chassis, we reject Telelect's argument that any small business that indicated that all supplies would be furnished by a small business would be nonresponsive if it intended to use trucks from a large business.

While Telelect misunderstood the IFB's definition of end item, post-bid-opening explanations cannot be used to make a nonresponsive bid responsive, even if the government could obtain a lower price by accepting the corrected bid. Ginter Welding, Inc., supra. Therefore, we find that TACOM properly rejected Telelect's bid.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel