



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kings Point Industries

File: B-223824

Date: October 29, 1986

DIGEST

Solicitation provision requiring bidders to specify the name and location of the facility where the supplies offered are to be produced relates to responsibility, since this information is not necessary to determine what a bidder that has not otherwise taken exception to the specifications will provide. An agency should not reject a bid as nonresponsive for failure to include such information, which may be furnished any time before award.

DECISION

Kings Point Industries protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DLA500-86-B-1447, issued by the Defense Industrial Supply Center, Philadelphia, Pennsylvania, a field activity of the Defense Logistics Agency (DLA). The IFB was for 1,714 survivors' slings and was a 100 percent small business set-aside. The protester contends that it submitted the low, responsive bid and that DLA should not have rejected it for failure to complete clause A-15, which required bidders to list the name and location of the facility where the supplies offered were to be produced.

We sustain the protest.

At bid opening on June 5, 1986, DLA received four bids. Kings Point, with a unit price of \$59.17, was low, while Texas Mil-Tronics Corporation, with a unit price of \$59.89, was second-low.

The contracting officer, upon review of Kings Point's bid, determined that the bidder had left blank paragraph 1 of Clause A-15, "Place of Performance-Inspection and Shipping Point," which required bidders to set forth the following:

1214162 - 037219

"The name and location of the MANUFACTURING FACILITY where the supplies offered are to be produced. Dealers are cautioned to cite manufacturing plants only. If more than one plant is specified, information must be submitted as to the amount and extent of the work to be done at each plant listed. With respect to each plant shown, the information furnished must be sufficient to identify the name and address of the owner and operator, if other than offeror." (Emphasis original.)

Kings Point completed paragraph 2 of clause A-15 by checking a box indicating that the supplies would not be furnished from stock. In addition, the firm used a rubber stamp with its name and street address in Fayetteville, North Carolina, to complete paragraph 3, indicating its preferred site for inspections, and paragraph 4, identifying the plant as its shipping point.

Since the solicitation instructed bidders to complete paragraph 3 only if they preferred inspection at a site "other than" that shown in paragraph 1, the contracting officer concluded that Kings Point's manufacturing facility was an unnamed facility other than its inspection facility. Therefore, he rejected the bid for failure to comply with solicitation clause D-21, "Manufacturing or Production Information/Sealed Bid Acquisitions." This clause provided in pertinent part:

"If bids are submitted which fail to provide the actual manufacturing/production source(s) for the item(s) offered, or, if such information is provided but restricted from disclosure . . . such bids will be rejected as nonresponsive."

In its protest, Kings Point acknowledges that it failed to complete paragraph 1 of Clause A-15, but contends that the other information in its bid indicates its agreement to manufacture the supplies at its Fayetteville plant. The rubber stamp with the protester's address appears not only elsewhere in clause A-15, but also on the face of the bid and on the firm's acknowledgment of an amendment that extended bid opening by 1 month. In addition, the protester argues, it has performed five prior contracts at the same location, and DLA's agreement to waive first article testing for the protested procurement depends upon this remaining unchanged.

Kings Point further states that clause D-21, which DLA used to disqualify it, is based on an agency regulation, DLAR 52.217-9004 (1985), that applies only to identification of sources for spare parts. Kings Point argues that the clause should not have been included in this IFB, since the survivors' sling is not a spare part but an integral item of rescue equipment. The protester also contends that the place of performance is a matter of bidder responsibility, rather than bid responsiveness.

DLA responds that information regarding the place of performance is necessary for it to determine precisely what the bidder intends to supply, and that public disclosure of the manufacturing source will prevent bid shopping and enhance competition. DLA also contends that to permit Kings Point to furnish the name and location of its manufacturing facility after bid opening would prejudice other bidders who, pursuant to the IFB, identified their facilities in their bids.

We disagree. The test for responsiveness is whether a bid as submitted represents an unequivocal offer to provide the requested supplies or services at a firm, fixed price. Epcor Industrial System, Inc., B-216725, Dec. 27, 1984, 85-1 CPD ¶ 2. Unless something on the face of the bid, or specifically a part thereof, either limits, reduces, or modifies the obligation of the prospective contractor to perform in accord with the terms of the invitation, the bid is responsive. Pierpoint, Inc., B-219855, Oct. 10, 1985, 85-2 CPD ¶ 401; 48 Comp. Gen. 685 (1969).

In the present case, Kings Point unqualifiedly offered to meet all the requirements of the invitation, and there was nothing on the face of the bid limiting, reducing, or modifying its obligation to perform in accord with the terms of the invitation. Consequently, the completion of paragraph 1 of clause A-15 was not necessary for DLA to determine precisely what the firm intended to supply.

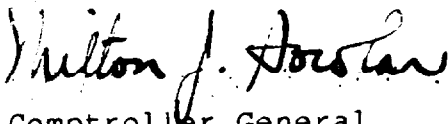
We have considered similar clauses that required bidders to identify the place of manufacturer, and we generally have concluded that they are not related to bid responsiveness. See, e.g., Steel Style, Inc.--Reconsideration, B-219629.3, Sept. 24, 1985, 85-2 CPD ¶ 330; Ace Metal Fabricators, Inc., B-210265, Mar. 14, 1983, 83-1 CPD ¶ 249. While there is an exception in those rare cases where the government has a material need to have performance take place at a certain location, see Keco Industries, Inc., B-199934, Sept. 22, 1980, 80-2 CPD ¶ 219, such information usually relates to the bidder's responsibility, and it can be furnished any time

before award. Id. Since the IFB here did not require performance at a specific location, failure to identify the manufacturing facility provides no basis to find Kings Point's bid nonresponsive.

This is true even though clause D-21 specifically stated that a bidder's failure to provide the actual manufacturing/production sources would result in rejection of the bid. An agency may not convert a matter of responsibility into one of responsiveness simply by the terms of a solicitation. See Paul N. Howard Co., B-199145, Nov. 28, 1980, 80-2 CPD ¶ 399, aff'd on reconsideration, 60 Comp. Gen. 606 (1981), 81-2 CPD ¶ 42.

We conclude that DLA improperly determined that Kings Point's bid was nonresponsive. Therefore, by letter of today to the Director, DLA, we are recommending award of the contract to Kings Point as the low responsive bidder if otherwise proper.

The protest is sustained.

for 
Comptroller General
of the United States