



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jarke Corporation

File: B-231858

Date: July 25, 1988

DIGEST

1. Bid on a total small business set-aside indicating that not all end items to be furnished would be produced by small businesses is nonresponsive.
2. The certificate of competency program addresses a small business concern's responsibility for purposes of receiving a government contract, and does not apply where the bid is nonresponsive.

DECISION

Jarke Corporation protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAC79-88-B-0046, a total small business set-aside issued by the Department of the Army for pallet storage racks. The Army rejected Jarke's bid because the bid indicated that not all end products to be furnished under the contract would be manufactured by a small business.

We deny the protest.

The IFB contained the Small Business Concern Representation provision set forth in Federal Acquisition Regulation (FAR) § 52.219-1 (FAC 84-28). In this provision, Jarke, the low bidder in the procurement, checked one box to certify that it was a small business concern, but checked another box certifying that "not all end items to be furnished will be manufactured or produced by a small business concern. . . ." As a result, the Army rejected the bid as nonresponsive.

Jarke contends that it certified that not all end products would be manufactured by a small business concern because it mistakenly believed, at the time, that raw materials were end products, and the steel needed to manufacture the racks was to be purchased from a steel mill that was not a small business. According to the protester, however, the racks

themselves, as the end items to be furnished under the contract, would be produced by Jarke, and this should have been evident from the balance of the bid; consequently, the small business requirement would be satisfied. The protester further argues that the contracting officer should have asked Jarke for clarification of the firm's bid, and should have permitted Jarke to correct its entry in the provision in issue.

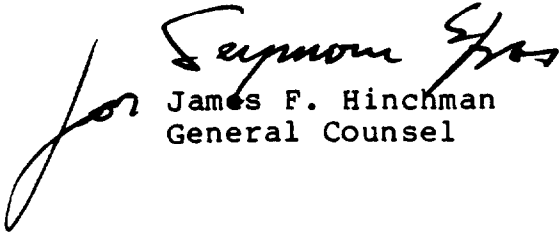
A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. See Rocco Industries, Inc., B-227636, July 24, 1987, 87-2 CPD ¶ 87. The certification concerning a bidder's obligation to furnish products manufactured or produced by a small business concern is a matter of bid responsiveness because it involves a performance commitment by the bidder. Id. Where a bid on a total small business set-aside fails to establish the bidder's legal obligation to furnish end items manufactured or produced by a small business concern, the bid must be rejected; otherwise, a small business contractor would be free to provide the end items from either small or large businesses as its own business interests might dictate, thus defeating the purpose of the set-aside program. Wright Tool Co., B-223821, Aug. 21, 1986, 86-2 CPD ¶ 211.

Moreover, notwithstanding what Jarke might have intended, or what Jarke thinks the contracting officer should have read into the bid, as a legal matter a firm's intent must be clearly ascertainable from the face of its bid. See DuHadaway Tool and Die Shop, Inc., B-216082, Aug. 29, 1984, 84-2 CPD ¶ 239. Where, as here, a bidder fails to make a specific small business commitment in the clause intended for that purpose, other indications of compliance in the bid do not necessarily establish the required unequivocal commitment but, instead, at best render the bid ambiguous. See Edsal Machine Products, Inc., B-220317, Oct. 1, 1985, 85-2 CPD ¶ 364. Furthermore, a nonresponsive bid may not be changed or considered for correction, even if a lower price could be obtained by accepting the corrected bid, since permitting a bidder to make its bid responsive after bid opening would be tantamount to permitting the submission of a new bid. See ATD-American Co., B-217290, Jan. 23, 1985, 85-1 CPD ¶ 91; Parco, A Division of Blue Mountain Products, Inc., B-211016, Mar. 28, 1983, 83-1 CPD ¶ 318.

Finally, Jarke suggests that the Army should not have rejected the bid without first referring the matter to the Small Business Administration pursuant to FAR subpart 19.6 (FAC 84-31), which concerns the certificate of competency program. A certificate of competency, however, warrants that a small business is capable and otherwise responsible

for the purpose of receiving and performing a government contract. The regulation does not apply where a bid is nonresponsive. See California Mobile Communications, B-223137, Aug. 20, 1986, 86-2 CPD ¶ 203.

The protest is denied.

for
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General Counsel