



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BCI Contractors, Inc.

File: B-232453

Date: November 7, 1988

DIGEST

A bidder's inadvertent completion of a certification in the small business concern representation clause that is not required for the type of contract to be awarded does not affect the responsiveness of the bid.

DECISION

BCI Contractors, Inc., protests the award of a contract to Eslin Company, Inc., under invitation for bids (IFB) No. 1050-3K15-88, issued as a total small business set-aside by the Department of Agriculture for the renovation of Building 007 at Beltsville, Maryland. BCI contends that Eslin's bid should be rejected as nonresponsive because the firm will not be able to comply with its certification that all end items to be furnished under the contract will be manufactured or produced by United States-based small business concerns; that Eslin will provide windows that do not comply with the specifications; and that the agency did not conduct an adequate investigation to determine whether Eslin is a responsible firm.

We deny the protest.

Eleven bids were received in response to the IFB. Eslin's bid of \$4,260,000 was lowest; BCI's \$4,284,000 bid was second lowest.

The IFB incorporated Federal Acquisition Regulation clause 52.219-1, the small business concern representation. The clause in part requires that the contractor provide only end items that are manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Another clause of the IFB (Notice of Total Small Business Set-Aside) specifically states, however, that the

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end item requirement does not apply in connection with construction or service contracts. Despite the fact that the IFB calls for award of a construction contract, Eslin completed the end item certification in the FAR clause indicating that all end items to be furnished will be manufactured or produced by United States based small business concerns.

BCI contends that Eslin's bid is nonresponsive because it will be impossible for the firm to meet the end item requirement. We disagree. Since the certification is not required for construction contracts, Eslin's inadvertent completion of the certification does not affect the responsiveness of the firm's bid. See A&C Building and Industrial Maintenance Corp., B-229931, Mar. 25, 1988, 88-1 CPD ¶ 309.

BCI also argues that it was misled as to the meaning of the specification for windows in the IFB, which calls for windows that are "equal to Pella Clad TD Double-Hung and Pella LD units as manufactured by Rolscreen Company, Pella, Iowa." BCI maintains that while it interpreted the specification as requiring the brand name windows, Eslin plans to provide other than Pella windows. BCI contends that it would have lowered its bid had it known that Pella windows were not required. We find this argument to be without merit. The specification clearly does not limit offerors to providing the brand name windows; assuming BCI interpreted it to require Pella windows, its interpretation simply was not reasonable. Further, to the extent BCI argues that Eslin will not furnish windows conforming to the specification, its contention involves a matter of contract administration which we will not review. See 4 C.F.R. § 21.3(m)(1).

Finally, BCI contends that the agency did not conduct an adequate investigation regarding whether Eslin is a responsible firm. There is no support in the record for this contention. Rather, the record indicates that the agency awarded the contract to Eslin after making an affirmative determination of Eslin's responsibility based on a preaward survey and extensive interviews with firms doing business with Eslin.

The protest is denied.

for 
James F. Hinchman
General Counsel