



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lea Britt Enterprises

File: B-232248

Date: December 5, 1988

DIGEST

1. A bid on a total small business set-aside, indicating that not all end items to be furnished would be produced by small business concerns, is nonresponsive because otherwise the bidder would be free to furnish supplies from a large business and therefore defeat the purpose of the set-aside.
2. Contracting agency reasonably rejected protester's bid, and accepted another's, based on comparison of bid sample flags' color with the standard referenced in the solicitation.
3. Whether in the past contracting agency may have accepted from the awardee supplies which did not conform to specifications, which has not been established, is irrelevant to the issue of whether the awardee's bid was responsive to the current solicitation.

DECISION

Lea Britt Enterprises protests the rejection of its low bid and the award of a contract to Valley Forge Flag Company, Inc., by the Veterans Administration (VA) under invitation for bids (IFB) No. M1-107-88, which was issued as a total small business set-aside for interment flags. The VA rejected Lea Britt's bid because its required bid sample was found to be nonconforming to the IFB's color specification.

We deny the protest.

Although this protest principally concerns the propriety of the VA's evaluation of bid samples, we note from our review of the protester's bid that it was nonresponsive for another reason: Lea Britt certified in its bid that not all end

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items to be furnished would be manufactured or produced by a small business concern as required by the provisions of section 52.219-1 of the Federal Acquisition Regulation contained in the IFB.

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 is nonresponsive and 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 interest might dictate, thus defeating the purpose of the set-aside program. Parpax Computer & Software, Inc., B-233072, Oct. 12, 1988, 88-2 CPD ¶ ____; Rocco Industries, Inc., B-227636, July 24, 1987, 87-2 CPD ¶ 87.

Even if it should be that the certification was caused by clerical error or misunderstanding on Lea Britt's part, this circumstance would not allow correction of the mistake so as to render the bid responsive. To ensure the fairness of the sealed bid process, the responsiveness of a bid may be determined only from the material which was available to the contracting agency at bid opening. Thus, a nonresponsive bid cannot be corrected to make it responsive. See Rocco Industries, Inc., B-227636, supra.

The VA, therefore, could not properly have made award to Lea Britt even if the agency had determined that the firm's bid sample was acceptable. Nevertheless, since the VA did reject Lea-Britt's bid because it submitted a nonconforming bid sample, and in view of the objections the protester has raised concerning the award to Valley Forge, we will address those issues.

In its initial letter of protest, Lea Britt asserted that its bid had been improperly rejected as nonresponsive on a ground that related to the firm's responsibility and which, therefore, should have been referred by the contracting officer to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). In its report to our Office, however, the VA explained that Lea Britt's bid had been rejected as nonresponsive because the sample flag which, pursuant to the terms of the solicitation, it had submitted with its bid had a color of blue--described by the VA's evaluator as "too light, looks like a washed out denim"--which failed to match the color standard referenced in the solicitation. As the VA correctly observed, the submission of a noncompliant bid

sample renders a bid nonresponsive. ATD-American Company, B-227134, July 17, 1987, 87-2 CPD ¶ 58. The responsiveness of a bid, of course, is not a matter required to be referred to the SBA for a COC.

In its response to the VA's report, Lea Britt acknowledged that it was "questionable" whether its sample met the color standard contained in the IFB. Based on our review of the record, including Lea Britt's bid sample and a swatch of the standard color to which it was compared, we think the VA reasonably concluded that Lea Britt's bid sample did not meet the color requirement. See Wyoming Weavers, Inc., B-229669.3, June 2, 1988, 88-1 CPD ¶ 519. This basis of protest is therefore denied.

In a supplement to its initial protest written on the day the VA's report was due and received by us thereafter, and in other, post-report correspondence, Lea Britt changed its emphasis away from the propriety of the rejection of its own bid, contending that under prior contracts, the VA had accepted from Valley Forge flags which did not meet specification requirements and that Valley Forge's sample flag submitted for the current procurement did not meet the required color of blue.

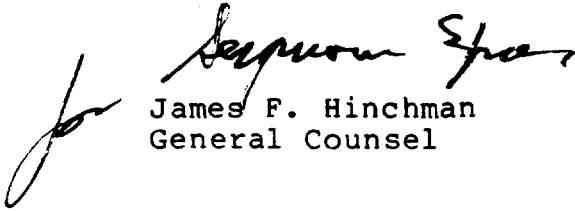
These allegations were not raised by Lea Britt until more than a month after it had been notified of the award to Valley Forge. Since Lea Britt's correspondence suggests that it was aware, even before bids were submitted under this procurement,^{1/} of the alleged deficiencies in flags previously supplied by Valley Forge to the VA, and since here there was a public bid opening following which interested parties are, by regulation, permitted to examine the bids received, we have serious doubts as to the timeliness of these allegations. Tioga Pipe Supply Company, Inc., B-230040, Feb. 24, 1988, 88-1 CPD ¶ 190; P-B Engineering Co., B-229739, Jan. 25, 1988, 88-1 CPD ¶ 71.

In any event, we note that whether the VA accepted nonconforming supplies in the past (which has not been established) is not relevant to the responsiveness of Valley Forge's bid submitted for this procurement. As for the protester's contention that Valley Forge's bid was nonresponsive because its bid sample did not have the proper shade of blue, we have examined the bid sample and the

1/ The protester claims to have used as a "model" a Valley Forge flag obtained from the family of a deceased veteran and to have discovered the alleged deficiencies in that flag "while working" with it.

swatch of the standard color to which it was compared, and have no reason to conclude that the VA abused its discretion in determining that Valley Forge's bid sample was acceptable and, therefore, that its bid was responsive.

The protest is denied.



James F. Hinchman
General Counsel