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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Midlantic Steel Co., Inc.

File: B-237030

Date: September 22, 1989

DIGEST

Bid submitted in response to a small business set-aside solicitation which contains certification that not all end items to be furnished under the contract will be products of a small business manufacturer cannot be used to establish bidder's legal commitment to do so.

DECISION

Midlantic Steel Co., Inc. protests the rejection of its bid by the Defense Logistics Agency under invitation for bids (IFB) No. DLA500-89-B-0896, a total small business set-aside for quantities of nonelectrical wire. The bid was rejected because Midlantic, in the IFB's Small Business Concern Representation provision, certified that not all end items to be furnished under the contract would be manufactured by a small business concern.

Midlantic's position is that it made a simple clerical error in its certification that it should have been allowed to correct under mistake in bid procedures set forth in Federal Acquisition Regulation § 14.406. Midlantic refers to the IFB's Place of Performance clause, in which it identified Techalloy of Union, Illinois as the manufacturing facility, as evidence that its certification resulted from a clerical error--according to the protester, Techalloy is a small business and all other bidders also identified Techalloy as their supplier.

There is no legal merit to this protest. A bidder for a supply contract that is set aside for small business must obligate itself to furnish the product of small business. 13 C.F.R. § 121.5(b)(2) (1988); Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD ¶ 149. A bidder that certifies that it will not furnish the product of a small business does not so obligate itself and renders its bid

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nonresponsive. Propper Mfg. Co., Inc. et al., B-233321 et al., Jan. 23, 1989, 89-1 CPD ¶ 58; American Amplifier and Television Corp., 53 Comp. Gen. 463 (1974), 74-1 CPD ¶ 10. The fact that the bidder identifies a small business in the Place of Performance clause does not change this result--that clause cannot be used to make a bid responsive to the requirement to furnish the product of a small business, because the information provided therein is viewed as pertaining to bidder responsibility rather than to the bidder's performance obligation. Delta Concepts, Inc., 67 Comp. Gen. 522 (1988), 88-2 CPD ¶ 43. That being so, the mistake in bid procedures cannot be used to correct the certification, since it is well-established that the mistake rules cannot be used to make a nonresponsive bid responsive. Aerial Machine & Tool Corp., B-234052, Jan. 13, 1989, 89-1 CPD ¶ 41; 40 Comp. Gen. ¶ 432 (1961).

The protest is dismissed.



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