



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bulloch International, Inc.--Request for Reconsideration

File: B-237369.2

Date: April 10, 1990

John K. Hobbs, for the protester.
Christine S. Melody, Esq., Office of General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Prior decision, holding that a bid submitted under a total small business set-aside is nonresponsive when it is not clear from the bid whether the bidder will comply with the requirement to supply items manufactured or produced by small business concerns in the United States, is affirmed where protester fails to show any error of fact or law in prior decision.

DECISION

Bulloch International, Inc., requests reconsideration of our decision, Bulloch Int'l, Inc., B-237369, Feb. 5, 1990, 90-1 CPD ¶ , denying its protest concerning invitation for bids (IFB) No. N47408-89-B-2509, issued by the Naval Construction Battalion Center, Port Hueneme, California, for refrigerated containers, related testing, data, and spare parts. Bulloch challenges our finding that its bid was nonresponsive and argues that our decision was based on an incorrect interpretation of its bid.

We affirm the decision.

The IFB was issued as a total small business set-aside on July 18, 1989, and incorporated by reference the regulatory provisions implementating the Buy American and Trade Agreements Acts, Defense Federal Acquisition Regulation Supplement (DFARS) § 252.225-7005 (1988 ed.). The solicitation also required the bidder to certify that it is a small business concern and that all end items to be furnished under the contract would be manufactured or produced by

small business concerns in the United States. See Federal Acquisition Regulation (FAR) § 52.219-1.

In its bid, Bulloch certified that it would furnish all end items manufactured or produced by a domestic small business; however, in its Buy American Act certificate, Bulloch indicated that it was offering an end product from Australia. Because of these conflicting certifications in Bulloch's bid, the Navy was unable to determine from the face of the bid whether all end items to be furnished under the contract would be manufactured or produced by small business concerns within the United States as required by the solicitation. Accordingly, although Bulloch was the apparent low bidder on the solicitation, the Navy rejected Bulloch's bid as nonresponsive.

A bid on a small business set-aside must establish the legal obligation of the bidder to furnish supplies manufactured or produced by a domestic small business, generally by the appropriate certification in the bid to that effect; otherwise, the bid is nonresponsive to a material requirement of the set-aside and must be rejected. See Wire Rope Corp. of America, Inc., B-225672, Mar. 13, 1987, 87-1 CPD ¶ 286. Similarly, the bidder's Buy American Act certification must not exclude any end products or otherwise indicate that it is offering foreign end products, since, in those circumstances, the government's acceptance of the bid would not result in a contractual obligation to furnish only domestic end products. Id. Since it was unclear from the face of Bulloch's bid whether the end product was to be manufactured in the United States or in Australia, we upheld the Navy's determination that Bulloch's bid was nonresponsive, and denied Bulloch's protest.

In its request for reconsideration, Bulloch argues, as it did in the initial protest, that its Buy American Act certification indicating Australia as the "Country of Origin" of its products did not mean that Bulloch was offering an end product from Australia. Instead, Bulloch argues that it listed Australia as the country of origin to indicate only that a component part of the end product would come from a foreign country. Bulloch thus contends that because we stated in our decision that Bulloch's Buy American Act certification indicated that Bulloch "would supply an end item manufactured in Australia," our decision was based on an incorrect assumption and should be revised. We disagree.

The Buy American Act certification portion of Bulloch's bid indicated that Bulloch would furnish an "FMS/Offset arrangement country end product," and listed Australia as

its origin. As explained in our initial decision, an "FMS/Offset arrangement country end product" by definition is a product manufactured in the designated FMS/Offset arrangement country.^{1/} See DFARS § 225.101. Thus, by stating in its bid that it would provide an FMS/Offset arrangement country end product, Bulloch in effect indicated that the item would be manufactured in Australia; even if, as Bulloch argues, it intended only to indicate that components from Australia would be used in the manufacture of its product, that intention simply was not reflected in Bulloch's bid.

Finally, Bulloch argues that our prior decision relied on "decisions inappropriate to the instant protest," and instead cites Michigan Instruments Corp., 60 Comp. Gen. 397 (1981), 81-1 CPD ¶ 302, and Dayton Chemical Corp., B-200122, May 13, 1981, 81-1 CPD ¶ 373, in support of its position. In Michigan Instruments, we held that offering to furnish products containing foreign components does not automatically negate a firm's status as a small business concern. That decision thus is not controlling in this case, given that Bulloch's bid did not indicate that its product would be composed of foreign components, but rather that the product itself would be manufactured in a foreign country. In Dayton Chemical, we found that a bid was properly rejected as nonresponsive where it did not indicate that the bidder would furnish products manufactured by a small business. That decision thus supports our finding in this case that Bulloch's bid was properly rejected as nonresponsive because it did not unequivocally show that Bulloch would furnish an end product manufactured by a domestic small business. See Jarke Corp., B-231858, July 25, 1988, 88-2 CPD ¶ 82; Wire Rope Corp. of America, Inc., B-225672, supra.

^{1/} The foreign military sales (FMS)/Offset arrangement program in part permits waiver of the price differentials normally applied pursuant to the Buy American Act for products from an FMS/Offset arrangement country such as Australia. See DFARS §§ 225.7310(c)(2) and 225.7403(a)(3).

Since Bulloch has failed to show any error of fact or law in our decision, the decision is affirmed.



for
James F. Hinchman
General Counsel