



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Hankins Lumber Company, Inc.

**File:** B-248108

**Date:** July 27, 1992

A. Burton Hankins for the protester.  
Rhea Daniels Moore, Esq., Department of Agriculture, Forest Service, for the agency.  
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly rejected as nonresponsive protester's high bid in sealed-bid timber sale set aside for small business concerns, where protester failed to include with its bid a properly executed "Certificate of Small Business Status," which contained specific contract performance commitments.

### DECISION

Hankins Lumber Company, Inc. protests the rejection of its bid by the Department of Agriculture, Forest Service, under the Compartment 264 timber sale in the Bienville National Forest, Jackson, Mississippi. The protester's high bid on the sale, which was set aside for small business concerns, was rejected as nonresponsive because Hankins failed to include a signed "Certificate of Small Business Status" with its bid, as required by the solicitation.

We deny the protest.

The bid form supplied by the agency to firms who responded to the advertisement of sale included an addendum which informed prospective bidders that bids from large businesses would be considered if no valid bid was received from a small business concern, and that, in order for a small business concern to receive preferential consideration for award, it was required to complete and submit with its bid the "Certificate of Small Business Status." This certificate required the bidder to certify that it is a small business concern (as defined in the certificate), and also to agree to meet the following performance commitments: (1) in reselling the timber from the sale, the bidder would sell 100 percent of the southern yellow pine sawtimber to

small business processing facilities and would not sell more than 30 percent of the other sawtimber species listed in the contract to large business processing facilities; and (2) in manufacturing the timber, the bidder would use only its own facilities or those of concerns that qualify as small businesses.

Hankins submitted the highest of the four bids opened on March 24, 1992. However, Hankins failed to sign the certificate indicating that it is a small business concern and setting forth the other performance requirements listed above. As a result, the agency rejected Hankins' bid as nonresponsive and made award to Wiggins Lumber Company, the next high bidder which submitted a properly executed certificate with its bid. Hankins thereupon filed this protest.

Hankins principally contends that its failure to complete the small business certification was not a proper basis upon which to reject its bid, because the agency had independent knowledge that Hankins was a small business concern and that it had not resold timber from a government sale to a large business concern. The protester also maintains that since its failure to submit the certificate was a mere "oversight," the firm's representative who was present at bid opening should have been permitted to promptly correct the failure by signing the certificate.

Bid responsiveness involves the question of whether the bid as submitted represents an unequivocal offer to do exactly what the government has specified, so that acceptance of the bid will bind the contractor to meet the government's requirements in all material aspects.<sup>1</sup> Last Camp Timber, supra. Responsiveness determinations are made exclusively on the basis of information submitted with the bid or available at the time of bid opening; post-bid opening explanation cannot be used to cure a nonresponsive bid. D.M. Baker, B-223091; B-223156, Aug. 11, 1986, 86-2 CPD ¶ 175; see Aircraft Components Inc., B-235204, Aug. 2, 1989, 89-2 CPD ¶ 98. Where a bid fails to include a properly completed certification which contains performance requirements designed to accomplish the purposes of a small

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<sup>1</sup>While it is true that the Federal Acquisition Regulation (FAR) does not govern sales solicitations, the strict rules governing bid responsiveness applicable to sealed-bid procurements are generally applied in sealed-bid timber sales. See Last Camp Timber, B-238250, May 10, 1990, 90-1 CPD ¶ 461; D.M. Baker, B-223091; B-223156, Aug. 11, 1986, 86-2 CPD ¶ 175; Trans South Indus., Inc., B-224950, Dec. 19, 1986, 86-2 CPD ¶ 692.

business set-aside, the bid is nonresponsive and must be rejected. Last Camp Timber, supra.<sup>2</sup>

Since the certificate in this solicitation required the bidder to agree to specific small business performance requirements concerning the resale and processing of the timber, Hankins' bid was nonresponsive for failing to include a completed certification. Without the certification the bid did not commit Hankins to resell or process the timber in compliance with the performance requirements. This being the case, the factors cited by Hankins--the Forest Service's alleged independent knowledge that Hankins was a small business concern and that Hankins had never resold the timber to a large business concern--do not provide legal justification for waiving the omission of the certification. Without the certification, notwithstanding Hankins' actions under prior sales contracts or its stated intent under the sale in issue, the firm would be free to resell the timber or have it processed by a large business, as its own interests dictated. This would defeat the purposes of a small business set-aside. See Insinger Mach. Co., supra. Under these circumstances, the agency properly rejected the Hankins' bid as nonresponsive. See Last Camp Timber, supra.

The firm's representative present at bid opening could not properly have been permitted to correct the error by signing the certificate after bid opening; because the responsiveness of a bid must be determined solely from the bid documents at the time of bid opening, a nonresponsive bid cannot be cured by such a post-bid opening action. See Hintz and Hintz Logging, B-225124, Nov. 18, 1986, 86-2 CPD ¶ 583; D.M. Baker, supra. Allowing Hankins to correct its nonresponsive

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<sup>2</sup>We note that the failure of a bidder on a small business set-aside to submit with its bid an executed certificate regarding only its size status does not, in itself, render the bid nonresponsive; such a failure can be waived as a minor informality because the size status information is not needed to determine whether the bid meets the solicitation's material requirements. Insinger Mach. Co., B-234622, Mar. 15, 1989, 89-1 CPD ¶ 277.

bid would have given it the option of accepting or rejecting the contract after the exposure of other bids, which undermines the competitive process. See Last Camp Timber, supra.

The protest is denied.

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for James F. Hinchman  
General Counsel