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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-186615

**DATE:** November 23, 1976

**MATTER OF:** Eastern Rotorcraft, Division of TransTechnology Corporation

**DIGEST:**

Omission from IFB of clause required by regulation provided compelling reason for solicitation to be canceled after bid opening, since contracting officer did not have adequate information to establish priority for negotiation of LSA set-aside portion of IFB.

Invitation for bids (IFB) No. F41608-76-B-0379 was issued by the Department of the Air Force on March 16, 1976. The solicitation was a 1-year term, requirements-type contract for cargo tie down straps for multi-aircraft. The requirement was a 50-percent labor surplus area (LSA) set-aside. The required item is a qualified product under military specification MIL-T-27260B.

There are six firms on the qualified products list with four being in a labor surplus area. Four bidders responded by the bid opening date of April 15, 1976. Eastern Rotorcraft, Division of TransTechnology Corporation (Eastern Rotorcraft), was the low bidder. On May 17, 1976, the procurement action was canceled because of the failure of the IFB to include the required clause contained in Armed Services Procurement Regulation (ASPR) § 7-2003.21 (1976 ed.), entitled "Eligibility for Preference as a Labor Surplus Concern." Eastern Rotorcraft protests the cancellation of the IFB.

First, Eastern Rotorcraft argues the solicitation was improperly canceled because the letter of May 17, 1976, canceling the IFB did not contain the specific grounds for such cancellation. In this regard, the failure to provide an explanation in the cancellation notice has been viewed by our Office as a procedural omission that does not affect the validity of the cancellation. Union Specialties Company, B-178255, February 25, 1974, 74-1 CPD 95.

Second, Eastern Rotorcraft contends cancellation was improper due to the absence of a cogent and compelling reason. The Air Force canceled the IFB for its failure to include the eligibility clause which determines the priority in negotiating the set-aside portion. Eastern Rotorcraft alleges that all necessary information for determining its eligibility as an LSA concern required by the omitted clause was within the four corners of its bid.

In this regard, Eastern Rotorcraft filled out section B10, entitled "Preference for Labor Surplus Area Concerns." The clause requested information on the bidder's status as an LSA concern in case of tie bids. Eastern Rotorcraft identified the location where the items would be produced. The clause (which stated it did not apply if the procurement was set aside for LSA concerns) required that bidders submit evidence that they were a certified eligible concern with a first or second preference, which Eastern Rotorcraft did not do.

On the other hand ASPR § 7-2003.21, which was omitted from the IFB, contained essentially the same information but, instead of submission of a certificate of eligibility, required a representation of eligibility as a certified-eligible concern.

The pertinent section reads as follows:

"Offeror represents that as of the date of submitting this offer, he or his subcontractors are, in accordance with the partial labor surplus area or partial small business set-aside clauses included elsewhere in the solicitation,

- ( ) a certified-eligible concern with a first preference.
- ( ) a certified-eligible concern with a second preference.

"CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in (b) above will preclude consideration of the offeror as a LSA concern. In addition, if

eligibility is based on status as a certified-eligible concern, failure to complete the representation of eligibility above will preclude consideration of the offeror as a certified-eligible concern." (Emphasis supplied.)

Missing from Eastern Rotorcraft's bid was either the self-certification that it was a certified-eligible concern with a preference, pursuant to the above omitted clause, or evidence of such status as required by section 110 of the IFB. Further, when certified, a labor surplus area concern not only agrees to perform the work in or near a classified section of unemployment but also commits itself to hiring disadvantaged individuals in accordance with plans approved by the Secretary of Labor. 29 C.F.R. § 8.7(b) and implementing ASPR § 7-2003.5(a).

The protester argues that the contracting officer could have obtained this information by calling the Department of Labor for the classification of the area Eastern Rotorcraft designated as the location where the work was to be performed.

The certificate of Eastern Rotorcraft concerning its eligibility was issued on April 21, 1976, and submitted 6 days after bid opening. The mere fact that Eastern Rotorcraft indicated that 25 percent of the work would be performed in a labor surplus area, by reason of having completed section 10B, does not entitle it to a "first preference." Further, there was no commitment by the bidder at the time the bid was submitted that disadvantaged individuals in the area of the bidder's facility would be hired in accordance with a plan previously approved by the Secretary of Labor.

Even in a situation where the invitation does not require submission of evidence with the bid to establish priority for negotiation, we have held that a bidder would not be permitted to submit information after bid opening which would obtain a higher priority than that claimed in its bid. B-165522, February 20, 1969. Eastern Rotorcraft did not claim first preference until after bid opening when the certificate of eligibility was submitted. As previously noted, Eastern Rotorcraft's bid only indicated the plant location where the work was to be performed and was not sufficient to constitute evidence of a first preference. From the information submitted, Eastern Rotorcraft was only entitled to a group 5 ranking. ASPR § 7-2003.5(a). Eastern Rotorcraft could not submit evidence of first preference (entitling it to a group 1 ranking) after bid opening since it had not claimed such preference in its bid.

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Even if the contracting officer knew that Eastern Rotorcraft possessed a "certified eligible" certificate for first preference prior to bid opening, there is no requirement that a bidder must produce under or claim the highest labor surplus priority which it possesses. B-171298, February 8, 1971.

Accordingly, based on the information contained in its bid, Eastern Rotorcraft would be precluded from consideration as a certified eligible concern with a first preference.

Our Office has held that even the utilization of an inadequate, ambiguous, or otherwise deficient specification is not in and of itself a "compelling" reason to cancel an IFB and readvertise where an award under the solicitation as issued would serve the actual needs of the Government and would not prejudice other bidders. Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183. The bidder that would be prejudiced here is Eastern Rotorcraft as the other bidders provided the information in section B10 and submitted certificates of eligibility prior to bid opening, placing them in a higher category than Eastern Rotorcraft.

Since the omission from the IFB of the "Eligibility for Preference as a Labor Surplus Concern" clause required by regulation resulted in prejudice to Eastern Rotorcraft, there was a compelling reason for the solicitation to be canceled after bid opening. Accordingly, the protest is denied.

Deputy

  
Comptroller General  
of the United States