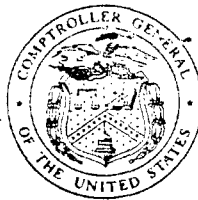


DECISION

12162 Noted
Part II

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

FILE: B-195712

DATE: November 29, 1979

MATTER OF: UWD Manufacturing Incorporated D3438

DIGEST:

Protest of Bid Rejection as Non responsive

1. Letter bid was properly rejected as non-responsive where it did not contain representation, as required by invitation, that items to be furnished would be manufactured by domestic small business concern.
2. Responsiveness of timely letter bid may not be determined from late confirming bid which was ineligible for consideration under invitation's "late bid" provisions.

2
UWD Manufacturing Incorporated (UWD) protests the rejection of its letter bid as nonresponsive under invitation for bids (IFB) DLA 700-79-B-1413, issued as a total small business set-aside by the Defense Logistics Agency (DLA), Defense General Supply Center (DGSC), Columbus, Ohio for splash guards. D3437

UWD's letter bid, the lowest priced of all bids received, was rejected because it did not expressly state that it was subject to all the terms and conditions of the IFB, or that the splash guards offered by UWD would be manufactured by a small business concern located in the United States, its possessions or Puerto Rico.

UWD contends that these deficiencies ^{were} insignificant and do not warrant rejection of its bid. UWD further invites attention to its formal bid, mailed one day prior to the June 15, 1979 bid opening but not received until June 19, 1979, alleging that the late confirming bid "should have clarified the smaller areas of concern."

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The timely letter bid, comprising one page of UWD's stationery, contained a statement of the IFB number and date of bid opening; a reference to the splash guards and their National Stock Number; the item number, quantity, unit designation, unit price and extended price; delivery and discount terms; the statement "small business"; and advice that the formal bid package was mailed June 14, 1979.

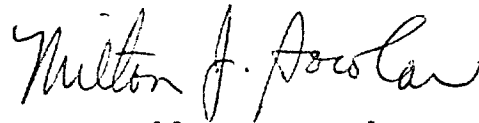
Defense Acquisition Regulation (DAR) § 2-301(c) (1976 ed.) provides that if a bidder utilizes its own bid form or a letter to submit a bid, such bid may be considered only if the bidder accepts all the terms and conditions of the invitation, and award on the bid would result in a binding contract, the terms and conditions of which do not vary from the terms and conditions of the invitation. Such acceptance, while necessary, need not be explicit. See B-173746(1), October 26, 1971; B-113920, February 27, 1953.

This is not to say that a letter bid is acceptable if it omits material information which must be submitted with the bid. The failure of a letter or telegraphic bid on a total small business set-aside solicitation to represent that the bidder would furnish items manufactured by a domestic small business concern, as required by the instant IFB, necessitates rejection of such a bid as nonresponsive. See Mil-Pac, Inc., B-181717, October 8, 1974, 74-2 CPD 196. Accordingly, for this reason, we concur with DLA that UWD's bid was nonresponsive.

With regard to UWD's suggestion that its formal bid, received four days after bid opening, should have "clarified" DGSC's "smaller areas of concern," the IFB's applicable clause provided that a bid received after bid opening may not be considered unless sent by registered or certified mail no later than the fifth calendar day before the date specified for receipt of bids. UWD's late confirming bid, sent by ordinary mail one day prior to bid opening, clearly fails to qualify for consideration under this provision. We have specifically rejected the argument that the responsiveness of a timely telegraphic bid may be determined by the content of a late

confirming bid which is ineligible for consideration, stating that a determination of responsiveness in such situations may be made only on the basis of the timely bid itself without regard to extrinsic evidence. See Imperial Eastman Corporation, 55 Comp. Gen. 605, 608 (1975), 75-2 CPD 417. We believe the same rule should be applied to letter bids.

The protest is therefore denied.

A handwritten signature in cursive script, reading "Milton J. Ascolan".

For The Comptroller General
of the United States