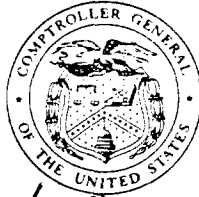


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**DECISION**



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

*[Protest of Bid Rejection as Nonresponsive]*

FILE: B-201445

DATE: May 22, 1981

MATTER OF: Wyatt Lumber Company

**DIGEST:**

Rejection of bid as nonresponsive where no small business supplier is indicated in bid was proper under terms of IFB and because such failure to name supplier precludes other bidders from timely filing size protest with contracting officer.

Wyatt Lumber Company (Wyatt) has protested the rejection of its low bid submitted under invitation for bids (IFB) No. DLA 720-81-B-0130 issued by the Defense Construction Supply Center, Columbus, Ohio (DCSC).

The IFB, a 100-percent small business set-aside, was for a quantity of treated softwood lumber and bidders had to certify that a small business product would be supplied. In addition, provision K70 of the IFB required bidders to list the production facilities to be utilized.

Wyatt, a broker, submitted the low bid but listed no production facility in provision K70 but instead listed the treatment plant to be utilized. The DCSC phoned Wyatt, after bid opening, and requested the name of the production facility (mill) Wyatt planned to use and the following business day Wyatt responded by wire with the mill's name. After receipt of the wire, DCSC advised Wyatt that its bid was being rejected as nonresponsive because the late amendment of its bid could not be accepted in view of provision K70.

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Provision K70 reads as follows:

"SUPPLYING MILLS (1979 DEC) - DCSC:

"This acquisition is set-aside 100% for small business concerns. Supplying mills and shipping points must be listed in Provision K01, Production Facilities. Failure to identify supplying mills in telegraphic, mailed, or hand-delivered offers submitted in response to this solicitation will render such offers nonresponsive. After award, supplying mills cannot be changed without the written approval of the contracting officer." (Emphasis in original.)

Wyatt argues that the rejection of its bid by DCSC failed to follow DCSC's normal practice of permitting substitution of small business suppliers or subcontractors after bid opening and past decisions of our Office which have permitted such substitution. Wyatt cites B-166724, August 11, 1969, wherein we permitted a bidder to substitute another supplier before award for the listed supplier which was found not to be a small business concern. Wyatt further states that the August 11, 1969, decision was cited with approval in connection with an earlier protest filed by Wyatt. Wyatt Lumber Company, B-196705, February 7, 1980, 80-1 CPD 108. Wyatt concludes that the only difference in the current factual situation and the facts of the two prior decisions is that Wyatt failed to list any production facility whereas in the prior cases, a bidder was permitted to substitute for an unacceptable supplier.

DCSC has responded that the naming of small business suppliers in the bid is crucial to this type of procurement. Because of the volatile nature of lumber prices, only a 7-day bid acceptance period is utilized in these solicitations. Moreover, all

bidders on these procurements are dealers or brokers, not mills themselves; therefore, the naming of suppliers in the bid is critical to permit other bidders to timely file a size protest within the required 5-day timeframe and make award within the 7-day acceptance period. Finally, DCSC points out that the two cases cited by Wyatt as controlling did not contain provision K70 and, therefore, are inapplicable to the present procurement.

In the instant case, we find the actions of DCSC to have been proper in rejecting the bid of Wyatt as nonresponsive under the wording of provision K70.

Wyatt's naming of the treatment plant did not constitute indication of the production facility as the small business source of supply to satisfy provision K70. The Small Business Administration regulations, 13 C.F.R. § 121.3-8(c)(2)(ii) (1980), make clear that, for purposes of size determinations, the mill is considered the manufacturer or producer of treated lumber, even if the lumber is treated elsewhere. For other bidders to be able to file a size protest, the mill, not the treatment plant, had to be indicated in the bid.

Provision K70 adequately advised bidders of the risks attendant in not identifying the production facility and Wyatt's bid was properly rejected.

Finally, the Defense Logistics Agency, in commenting on the report furnished our Office by DCSC, states that while DCSC treatment of bids has been consistent with B-166724 and provision K70, it believes that the entire matter should be considered one of responsiveness. Accordingly, provision K70 is being revised to make clear that bids submitted in these procurements will be considered nonresponsive where a large mill, a nonproducing mill (treatment plant), or no mill is named in the bid.

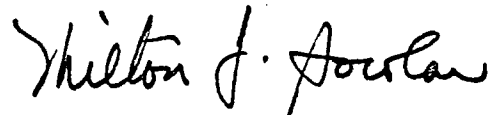
While, as noted above, our review indicates that DCSC has properly handled these bidding situations in the past in accordance with the terms

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present in the solicitations and B-166724, we believe the proposed action by DLA in rewording provision K70 will clarify the area so that all bidders will be aware that no substitution of suppliers or naming of suppliers where none were named will be permitted after bid opening.

The protest is denied.

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

Acting Comptroller General  
of the United States