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DECISION



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

FILE:

DATE: April 5, 1982

MATTER OF: B-205712

Kings Point Mfg. Co., Inc.

DIGEST:

Where small business set-aside IFB provides a 5-percent cost advantage to bidders who agree to perform a substantial proportion of the contract costs in labor surplus areas and bid is ambiguous as to whether bidder will perform in labor surplus area, bid is not for consideration other than as non-labor-surplus-area bid, since it is low on labor surplus area basis, but not on non-labor-surplus-area, and bidder would be in a position to prejudice other bidders by explaining bid after bid opening.

Kings Point Mfg. Co., Inc. (Kings Point), protested the award of a contract to another firm under invitation for bids (IFB) DLA700-81-B-2259, a small business set-aside, issued by the Defense Construction Supply Center, Columbus, Ohio.

We deny the protest.

The IFB provided a 5-percent cost advantage to bidders who agree to perform a substantial proportion of the contract in geographic areas classified by the Secretary of Labor as labor surplus areas. If the aggregate costs that will be incurred by the bidder or its first-tier subcontractors in labor surplus areas amount to more than 50 percent of the contract price, the "substantial proportion" test is met.

Kings Point submitted the low bid. The bid stated that Kings Point would perform 51 percent of the manufacturing or production costs at 6443 Raeford Road, Cumberland County, North Carolina. Because of mistaken information obtained by the contracting officer from

sources in North Carolina, the contracting officer decided that Kings Point would not be performing a substantial proportion of the contract in a labor surplus area. Therefore, since the next low bidder, C. R. Daniels, Inc. (Daniels), qualified as a labor surplus area concern, the contracting officer added 5 percent of Kings Point's cost to the Kings Point bid. With the addition of the 5-percent factor, Daniels was evaluated as the low bidder and award was made to it.

Kings Point protested the award to the contracting officer. Kings Point convinced the contracting officer that the address designated for the performance of 51 percent of the work was in a labor surplus area. However, upon reexamination of the Kings Point bid, the contracting officer decided that the bid is ambiguous as to where the contract is to be performed. Therefore, the contracting officer decided not to disturb the award.

The contracting officer decided that the Kings point bid is ambiguous because, although it indicates in one place in the bid that 51 percent of the work will be performed at 6443 Raeford Road, in another place it indicates that the place of performance is 219 Gray Street. The latter address is not in a labor surplus area.

Kings Point protests the determination that the bid is ambiguous. Essentially, Kings Point's position is that the designation of the two places of performance in its bid is not inconsistent.

In response to paragraph K01a of the IFB, which required bidders to list the name and address of "each" manufacturing plant, mill or treating plant, Kings point listed only the 219 Gray Street address. Thus, while Kings Point indicated elsewhere in the bid that 51 percent of the work would be done at another address, the indication in K01a is that it would be done at 219 Gray Street. Kings Point contends that this is not a correct interpretation. Kings Point points out that the note following section K01a states that "paragraphs b, c and d below must be completed ONLY if the place

of inspection of supplies, packaging/point or shipping point are DIFFERENT than the place of manufacture/treating facility" and that Kings Point also completed paragraphs "b" (place of inspection (supplies)), "c" (place of inspection (packaging and packing point)) and "d" (shipping point) to show 219 Gray Street, because they are different from the place of manufacture which Kings Point considers to be 6443 Raeford Road.

However, the place of manufacture alluded to in the note in paragraph K01a is the place designated by the bidder in K01a. Although the note states that the bidder must complete paragraphs "b," "c" or "d" if the place of inspection or shipping point is different than the place of manufacture, where the bidder voluntarily states the exact same address for "b," "c" and "d" as it stated for "a," that is not an indication that the manufacture will not be performed at the same address. It is an indication that the services called for in "b," "c" and "d" will be performed in the same place as "a," the place of manufacture.

In the circumstances, on the face of Kings Point's bid there is an ambiguity as to whether Kings Point will perform at 6443 Raeford Road or 219 Gray Street. Where a bid is reasonably subject to more than one interpretation, only one of which makes the bid low, the bidder may not explain the bid's meaning after bid opening when the bidder would be in a position to prejudice other bidders. See Bill Strong Enterprises, Inc., B-200546, March 5, 1981, 81-1 CPD 173. Accordingly, the Kings Point bid was not for consideration other than as a non-labor-surplus-area bid.

Wilton J. Fowler
for Comptroller General
of the United States