

**DECISION**

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

**FILE:** B-208365.2**DATE:** April 20, 1983**MATTER OF:** C. Iber & Sons, Inc.**DIGEST:**

1. Compliance with solicitation provision that contractor perform 30 percent of the work with the contractor's own organization, a contract performance requirement in that the provision states how the work is to be accomplished, does not relate to responsiveness.
2. A bid that does not reduce, limit or modify requirement that the contractor perform 30 percent of the work with the contractor's own organization is responsive to the solicitation.

C. Iber & Sons, Inc. (Iber), protests the responsiveness of the bid of Evans Construction Co. (Evans) under invitation for bids (IFB) No. DACW43-82-8-0007, issued by the United States Army Corps of Engineers (Corps), for the construction of a pumping station. No award has been made.

For the reasons set forth below, we deny Iber's protest.

Paragraph SP-13 of the IFB's Special Provisions provides as follows:

"The Contractor shall perform on the site, and with his own organization, work equivalent to at least thirty percent (30%) of the total amount of work to be performed under the contract. If during the progress of the work hereunder the Contractor requests a reduction in such percentage, and the contracting officer determines that it would be to the Government's advantage, the percentage of the work required to be performed by the Contractor may be

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reduced, provided written approval of such reduction is obtained by the Contractor from the Contracting Officer."

Paragraph 7 of the Instructions to Bidders provides:

"Each bidder shall submit a description of the work which he will perform with his own organization (e.g., earthwork, concrete, mechanical, electrical etc.), the percentage of the total work this represents, and the estimated cost thereof. (See paragraph SP-13 of these specifications). Unless he has submitted such description with his bid, the successful bidder must furnish the said description to the Contracting Officer within five days after award."

The IFB's Bid Form, as completed by Evans, provides:

"PERFORMANCE OF WORK BY CONTRACTOR

"(a) If awarded a contract as a result of this invitation, the following work will be performed on the site with the bidder's own organization.

Description

Division 2-K, R, T  
Division 3  
Division 5  
Division 8

"(b) The work described represents 100 percent of the total amount of the work and the estimated cost is \$2,739,000.00."

The contracting officer determined the Evans bid to be nonresponsive and for rejection because the total cost for the work described by Evans on the Bid Form was estimated to be only 23.48 percent of the total contract work. Consequently, the contracting officer concluded that Evans' bid had imposed a condition which modified the 30-percent on-site requirement in paragraph SP-13 of the Special Provisions. Evans was so notified. Evans then protested the rejection to the Corps and our Office. The contracting

officer reviewed the determination that the Evans bid was nonresponsive and concluded, as follows:

"Having reviewed the matter again, I now conclude that the bid of Evans Construction Company is responsive and hence will be considered for award. After careful consideration, I have concluded that paragraph 7 of the Instructions to Bidders permits the successful bidder to furnish a description of the work which will be performed by his own organization to the Contracting Officer within five days after award, therefore, a defect in the description of such work on the bid form cannot be and is not a prerequisite for responsiveness. Though the description of such work on the bid form by Evans Construction Company may be defective, it can be clarified in the manner provided by paragraph 7 of the Instructions to Bidders."

Evans subsequently withdrew its protest. Iber, the second low bidder at \$2,877,000, protested the above-quoted decision of the contracting officer to our Office.

Iber contends that the Evans bid failed to meet the 30-percent requirement of paragraph SP-13 because the work described by Evans on the Bid Form as work which Evans would perform onsite with its own organization, at most, amounted to just 23.48 percent of the IFB's total contract work. In this regard, Iber alleges that its own computations show Evans' portion of the total contract work to be only 20.62 percent.

The Corps argues that the description of the contractor's own work in the Bid Form is not a prerequisite for bid responsiveness, but for information only. In support, the Corps asserts that, while paragraph SP-13 imposes a 30-percent standard, paragraph 7 of the Instructions to Bidders makes it clear that the description of the bidder's own work is only for obtaining information as to how the requirements of SP-13 will be met. According to the agency, any "defective" information on the Bid Form pertaining to paragraph SP-13 may be clarified after bid opening since the IFB permits such information to be supplied after award.

The Corps also states that the percentage of work to be performed by Evans is higher than the 23.48-percent figure estimated by the contracting officer. Even though the Evans listing of 100 percent as the work to be performed by its own forces is clearly in error, the agency emphasizes that Evans' description amounts to a "substantial" portion of the total contract work. In addition, the Corps of Engineers points out that the listed work encompasses other activities which typically amount to an additional 15 to 20 percent of the total contract value.

In response, Iber takes issue with the Corps' computations and continues to maintain that the Evans bid does not show compliance with the 30-percent requirement.

We agree with the Corps of Engineers that the provision on the Bid Form for describing the onsite work to be performed by the bidder is merely for information and need not be completed prior to bid opening. In fact, we have allowed bidders which have not completed the requested work description in the bid to furnish the information after opening. See 41 Comp. Gen. 106 (1961); 41 Comp. Gen. 555 (1962). Further, the informational nature of this portion of the Bid Form is reinforced by paragraph 7 of the Instructions to Bidders, which allows the successful bidder to furnish the work description within 5 days after award if not submitted with the bid. We have held that provisions similar to paragraph SP-13 are contract performance requirements which set forth how the work is to be accomplished. Therefore, compliance with such provisions relates to bidder responsibility, not responsiveness. See Delta Elevator Service Corporation, B-208252, March 23, 1983, 83-1 CPD \_\_\_; Contra Costa Electric, Inc., B-190916, April 5, 1978, 78-1 CPD 268; Wil-Da Mechanical and Electrical Company, Incorporated, B-184285, July 21, 1975, 75-2 CPD 56.

If the bidder does provide some information with his bid, the bid may be rejected if the information reduces, limits or modifies the solicitation requirement for performing a certain portion of the work with the contractor's own organization. For example, we have held that where unsolicited descriptive literature submitted with a bid contains material deviations from the solicitation's requirements, the bid is nonresponsive. See Log E/Spatial Data Systems, Inc., B-205016, May 17, 1982, 82-1 CPD 465.

In this regard, Iber refers to our decision in 45 Comp. Gen., supra, which involved a similar solicitation provision that required the contractor to perform 20 percent of the total contract work onsite with his own organization. In that case, the bidder inserted the figure "90" in the blank space on the face of the bid that asked for an estimation of the amount of subcontracting the bidder contemplated on the procurement. We stated:

"We believe the purpose of the bidder's representation statement on the face of the bid should have been obvious to all bidders. Since general provision 74 indicates that the Government desires that the successful contractor perform at least 20 percent of the work with its own forces, in our view the obvious purpose of the bidder's representation statement on the face of the bid was to test each bidder's responsiveness to the general provision. Since it is a matter of responsiveness that is involved here, the joint venture is precluded from justifying its nonresponsiveness by now attempting to explain why it was nonresponsive. While the bidder has offered an explanation, that information was not furnished with the bid and, as far as we are concerned, is information furnished after bid opening for the purpose of making the bid responsive. It is therefore unacceptable."

Iber argues that the above-described bidder response is analogous to the Evans response regarding the work Evans intended to perform utilizing its own forces. We disagree, and we find the case distinguishable. There, the bidder clearly took exception to the solicitation requirement. Moreover, unlike here, that solicitation contained no work description request to show compliance and did not permit the submission of the description after award.

We have held that the test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation and upon acceptance will bind the contractor to perform in accordance with all the terms

and conditions thereof. See 49 Comp. Gen. 553, 556 (1970). In the instant procurement, we find nothing in the way Evans completed the description of work to be performed by the contractor's own organization portion of the Bid Form that can be construed as a clear exception to the terms of paragraph SP-13.

Evans' description on the Bid Form indicates that the company will be using its own organization to perform division 2 work for subdrainage drain structure and all of the work for division 3 (concrete), division 5 (metals), and division 8 (doors and windows). It is obvious that this does not amount to 100 percent of the total contract work as stated by Evans on the Bid Form. However, because the Evans work description does not give definite percentages for the described work and the actual percentage is not ascertainable with precision from the IFB and Evans' bid, we find no exception to the 30-percent requirement. Therefore, questions regarding the percentage of work described by Evans are resolvable under paragraph 7 of the IFB's Instructions to Bidders, or as a matter of responsibility. See Contra Costa Electric, Inc., supra.

Protest denied.

for *Harry R. Van Cleave*  
Comptroller General  
of the United States