

DECISION

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

FILE: B-216293

DATE: December 21, 1984

MATTER OF: ASC Industries

DIGEST:

Bid submitted in response to total small business set-aside solicitation, in which bidder fails to certify that bidder would furnish materials manufactured or produced by small business, may be accepted where bidder binds itself to specific supplier under place of performance clause and agency has information on file indicating the supplier's status as a small business.

ASC Industries (ASC) protests the rejection of its bid under invitation for bids (IFB) No. DLA500-84-B-1031 for machine screws, issued by the Defense Industrial Supply Center (DISC), Defense Logistics Agency (DLA), as a total small business set-aside. DLA rejected ASC's bid as nonresponsive because it did not contain the required representation that the goods supplied would be manufactured or produced by a small business concern. ASC was the low bidder under this IFB, and no award has been made.

We sustain the protest.

Although it failed to complete the representation concerning small business manufacture, ASC listed LFC Industries, 1227 Corporate Drive, West Arlington, Texas (LFC), as its proposed manufacturer under the IFB clause entitled, "Place of Performance - Inspection and Shipping Point."

This Office consistently has held that if a bid on a total small business set-aside fails to establish the legal obligation of the bidder to furnish supplies manufactured or produced by small business concerns, the bid is nonresponsive and must be rejected, Mechanical Mirror Works, Inc., B-210750.2, Oct. 20, 1983, 83-2 C.P.D. ¶ 467. This is because a small business contractor would be free to provide the supplies from either small or large business manufacturers as its private business interests might dictate, thus defeating the intent of the set-aside program. DuHadaway Tool and Die Shop, Inc., B-216082, Aug. 29, 1984, 84-2 C.P.D. ¶ 239.

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However, we have permitted the acceptance of a bid where the bidder neglected to include this certification in its bid, but there was information in the bid as submitted which made it possible to ascertain the bidder's intention to supply products manufactured or produced by small business concerns, B-156852, June 9, 1965; see also Mechanical Mirror Works, Inc., B-210750.2, supra.

In B-156852, supra, two bidders failed to complete the representation at issue here. Both bidders named Honee Bear Canning Company, a small business, as the inspection point for the goods. We held that the omissions were not material since it was "clear that the procurement office [was] aware of the supplier's identity, its location and its status, based on past procurements." See also Dayton Chemical Corporation, B-200122, May 13, 1981, 81-1 C.P.D. ¶ 373.

Here, LFC was listed as place of performance. The IFB advised that the failure to list the place of performance could be cause to reject the bid, and further stated that the performance of work at other than the above location was prohibited unless approved in writing in advance by the contracting officer. Thus, in our view, ASC was bound to use LFC as the supplier. See Amalgamet, Inc., B-213552, Dec. 23, 1983, 84-1 C.P.D. ¶ 20. ^{1/} However, the DISC buyer, in his report to our Office, stated that he had no actual knowledge of LFC's size status, and that the activity records did not indicate LFC's small business status. Under these circumstances, the DISC contracting officer determined the bid nonresponsive since he believed that our decision in B-156852 was inapplicable.

ASC in its protest report comments alleged that information showing LFC was a small business was available

^{1/} In a recent decision, Automatics Limited, B-214997, Nov. 15, 1984, 84-2 C.P.D. ¶ ____, involving a different place of performance clause, we held that a bid received on a total small business set-aside solicitation which failed to indicate that the bidder was either a manufacturer or regular dealer was nonresponsive. We concluded that the failure to assume this obligation was not overcome by completion of the production and shipping point clause because, unlike the clause in this case, there was no language that the failure to list the place of performance could result in rejection of the bid or that performance of the work at other than the listed location was prohibited unless approved in writing by the contracting officer.

to the buyer. Specifically, ASC furnished a copy of standard form (SF) 129, the bidder's mailing list application, which indicated that LFC was an affiliate of ASC, and block 11 indicates the size of the firm as a small business concern. ASC stated the form was on file in the DISC small business office.

DLA responds that it investigated ASC's allegation and found the SF 129 in the contractor general file maintained in the DISC contracting division, not in the DISC small business office. DISC reports that, as a matter of practice, procurement personnel do not look at the contractor general file when evaluating bids. Furthermore, DLA contends block 11 provides status information from 1982 which is not current and, therefore, is unreliable and should not be considered to constitute self-certification. Therefore, DLA asserts the bid is nonresponsive.

We see no reason why the bid should be considered nonresponsive. DISC has in fact determined LFC's status from its records, and these records show that LFC is a small business. This information is not contradicted by any evidence in DISC's possession. Thus, the case is not distinguishable from our decision in B-156852, supra. Regarding DLA's assertion that the form may not be current, if DLA has doubt as to LFC's status, we think it is appropriate to refer this issue to the Small Business Administration.

Accordingly, we sustain ASC's protest. We recommend award to ASC if otherwise proper.

Melton J. Fowler
for Comptroller General
of the United States