

DECISION

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

B-217365

FILE:

DATE: February 25, 1985

R.F. Manufacturing Corp.

MATTER OF:**DIGEST:**

1. A bid submitted in response to a total small business set-aside, which failed to indicate the bidder would furnish supplies manufactured by a small business concern, was properly rejected as nonresponsive.
2. Responsiveness must be determined from material available at bid opening, and post-opening explanations cannot be considered to correct a nonresponsive bid.

R.F. Manufacturing Corp. protests the Army's rejection of its bid as nonresponsive and the award of a contract under invitation for bids (IFB) No. DAAA09-84-B-0554, a total small business set-aside. We deny the protest without awaiting comments from the protester on the agency report, since it is clear that the protest is without legal merit and therefore of the type we have summarily denied pursuant to 4 C.F.R. § 21.3(g) (1984). See Basic Marine, Inc., B-215236, June 5, 1984, 84-1 C.P.D. ¶ 603.

The IFB contained a Small Business Concern Representation clause, which requires that the bidder certify whether it is a small business concern and whether the supplies to be furnished under the contract will be manufactured by a small business in the United States, its possessions, or Puerto Rico. In its bid, the protester, who was the low bidder, represented its status as a small business concern, but indicated that not all the supplies to be furnished would be manufactured or produced by a small business. The protester also represented in its bid that it is not a manufacturer of the supplies offered. The bid was rejected as nonresponsive, since a bid by a nonmanufacturer on a small business set-aside must reflect the bidder's intention to furnish a product manufactured by a small business in order to be responsive. See the Federal Acquisition Regulation, 48 C.F.R. § 52.219-1 (1984).

R.F. Manufacturing protests the rejection of its bid on the bases that it was the low bidder and that its representation concerning the manufacture or production of the supplies was an error. The protester also states that it is the previous supplier of the item being procured under the subject solicitation, apparently to indicate that the contracting officer should have assumed that the company intended to comply with the small business set-aside requirements.

A responsive bid is one that on its face is an offer to perform, without exception, the exact thing called for in the invitation. The government's acceptance of the offer effectively binds the bidder to perform according to the invitation's requirements. Cascade Pacific International, B-208149, Aug. 3, 1982, 82-2 C.P.D. ¶ 106.

A bid on a small business set-aside must establish the legal obligation of the bidder to furnish supplies manufactured or produced by a small business concern. Wippette International, Inc., B-216304, Sept. 18, 1984, 84-2 C.P.D. ¶ 322. Otherwise the bid must be rejected as nonresponsive because the contractor would be free to provide the supplies from either small or large business manufacturers, thus defeating the intent of the legislation under which the set-aside program is authorized. See DuHadaway Tool and Die Shop, Inc., B-216082, Aug. 29, 1984, 84-2 C.P.D. ¶ 239. In this case, R.F. Manufacturing indicated in its bid that not all supplies to be furnished would be manufactured by a small business; its bid, therefore, was not responsive.

A bid's responsiveness must be determined from the bid itself. A contracting officer may not, after bid opening, consider a change or explanations of an otherwise nonresponsive bid in order to make it responsive. Cascade Pacific International, B-208149, supra, 82-2 C.P.D. ¶ 106 at 3. While it is apparently the view of the protester that the contracting officer should have assumed that it intended to comply with the contract requirements based on its previous performance, the bid as submitted did not legally obligate the company to comply with the small business products requirements. See DuHadaway Tool and Die Shop, Inc., B-216082, supra, 84-2 C.P.D. ¶ 239 at 2. The fact that the protester submitted the lowest bid does not alter this result because the possibility that the government could obtain a lower price by waiving a material bidding deficiency does not outweigh the importance of maintaining

the integrity of the competitive bidding system by rejecting nonresponsive bids. See Marino Construction Company, Inc., 61 Comp. Gen. 269 (1982), 82-1 C.P.D. ¶ 167. Accordingly, we find that the Army acted properly in rejecting the bid as nonresponsive. Basic Marine, Inc., B-215236, supra, 84-1 C.P.D. ¶ 603.

for *Seymour E. Fox*
Harry R. Van Cleve
General Counsel