

DECISION



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

FILE:

B-217286

DATE: April 26, 1985

MATTER OF:

Rut's Delivery Service

DIGEST:

1. The allegation that the contracting agency improperly allowed correction of a firm's bid after bid opening in order to make it responsive and low without foundation where the bid documents reveal that the mistakes as corrected by the agency were obvious in nature, involving the misplacement of decimal points in extended prices, and there is no evidence that the bid as originally submitted was other than low.
2. Under the Small Business Act, 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters of small business size status for federal procurements, and therefore GAO will not consider an allegation that the low bidder under a 100 percent set-aside is not a small business concern.
3. A bidder's failure to furnish with its bid a list of affiliates is a minor informality which may be waived or cured after bid opening.
4. An alleged solicitation impropriety apparent prior to bid opening must be protested to either the contracting agency or GAO prior to the time set for opening bids in order to be considered.

Rut's Delivery Service protests the proposed award of a contract to Von Der Ahe Moving and Storage, Inc. under invitation for bids (IFB) No. F11623-84-B-0056, issued by the Department of the Air Force as a 100 percent small business set-aside. Rut's principally alleges that the Air Force improperly allowed correction of Von Der Ahe's

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bid after bid opening so as to make it responsive and low. We deny the protest.

The procurement is for the packing, crating, and hauling of household goods at Scott Air Force Base, Illinois. The IFB contemplated multiple awards for various schedules of service for designated areas. Von Der Ahe was the apparent low bidder for Area I, Schedule III at \$354,225.00; Rut's bid was second low at \$364,350.00.

In support of its allegation, Rut's states that the copy of Von Der Ahe's bid which it obtained pursuant to a Freedom of Information Act (FOIA) request is different from the copy of Von Der Ahe's bid which the Air Force has furnished to this Office as part of its administrative report on the protest. Rut's points out that the copy of the bid furnished to us shows numerous corrections of extended prices.

Rut's also alleges that Von Der Ahe is not a small business concern, and thus is ineligible to receive any contract award under this total set-aside. Rut's further contends that Von Der Ahe has failed to submit an affidavit that it is the affiliate of another concern, as required by the IFB. Rut's also believes that Von Der Ahe is nonresponsive to perform the contract because it does not have the necessary authority to operate within the State of Illinois. Lastly, Rut's contends that the IFB was defective because it did not contain a Department of Labor wage determination.

The Air Force responds that the copy of Von Der Ahe's bid furnished to Rut's under the firm's FOIA request, obtained shortly after bid opening, is different from the copy furnished to this Office because the contracting officer subsequently noticed that Von Der Ahe had made obvious mathematical errors in calculating certain extended prices, which involved the misplacement of decimal points, but that these errors did not make the bid nonresponsive because the correct figures were easily obtained by multiplying Von Der Ahe's unit prices by the estimated quantities of the work. The Air Force states that, in accordance with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-2 (1984), which provides for the correction of clerical mistakes apparent on the face

of the bid, such as obviously misplaced decimal points, the contracting officer requested and obtained a verification of the bid from Von Der Ahe, and the bid's extended prices were then corrected. The Air Force does acknowledge, however, that the contracting officer erred in making the corrections on the face of the bid. See 48 C.F.R. § 14.406-2(b).

We see no reason to question the Air Force's response to the allegation. Although the contracting officer should not have corrected the bid on its face, and this undoubtedly gave rise to Rut's suspicions, the impropriety was merely procedural in nature, and provides no legal basis for protest. Furthermore, the matter is not germane to the award of any contract for Area I, Schedule III, since there are no corrections in this portion of Von Der Ahe's bid. Also, bids subject to correction under the mistake in bid procedures are not nonresponsive. Therefore, we find no basis to believe that Von Der Ahe's total bid for Area I, Schedule III as originally submitted was other than low at \$354,225.00 or otherwise nonresponsive. Rut's allegation that the Air Force acted improperly in this matter is without foundation.

With respect to Rut's assertion that Von Der Ahe is not a small business and therefore ineligible for any contract award under this set-aside, the Air Force states that the Small Business Administration (SBA) has determined that Von Der Ahe is a small business for purposes of this procurement. Under the Small Business Act, 15 U.S.C. § 637(b)(6) (1982), the SBA has conclusive authority to determine matters of small business size status for federal procurements. Evans Inc., B-216260, Sept. 13, 1984, 84-2 CPD ¶ 290. Therefore, we will not consider the issue.

Rut's alleges that Von Der Ahe failed to furnish with its bid an affidavit stating that it is controlled by a parent company, in violation of the FAR, 48 C.F.R. § 52.214-17, as incorporated into the IFB, which provides that such affidavits are to be obtained when the contracting officer determines that disclosure of affiliated bidders is necessary to prevent practices prejudicial to fair and open competition, such as improper multiple bidding. As the Air Force points out, however, although Von Der Ahe certified in its bid that it was controlled

(but not owned) by an identified parent company, that parent did not submit a bid under this solicitation. In any event, we have held that a bidder's failure to furnish with its bid a list of affiliates is a minor informality which may be waived or cured after bid opening. Marathon Enterprises, Inc., B-213646, Dec. 14, 1983, 83-2 CPD ¶ 690. Therefore, Von Der Ahe may submit an affidavit as to its affiliated status at this point, if requested by the Air Force, and the responsiveness of its bid remains unaffected. Id.

As a corollary issue, Rut's alleges that another bidder is also an affiliate of Von Der Ahe's parent, and that the parent was therefore afforded an unfair competitive advantage because its affiliates were able to compete for the same contract. The Air Force, however, states that this bidder certified that it was not owned or controlled by any other concern. Regardless, the charge is totally irrelevant to Rut's protest since the bidder in question is not in line for any award under Area I, Schedule III as it did not submit a bid for that portion of the requirement. Furthermore, multiple bidding is not legally objectionable where legitimate business reasons for it exist. See 52 Comp. Gen. 886 (1973).

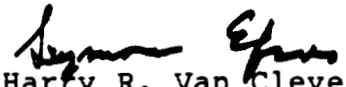
To the extent that Rut's alleges that Von Der Ahe is nonresponsive to perform the contract because it lacks the necessary authority to operate in the State of Illinois, the Air Force states that it has verified with the Interstate Commerce Commission that Von Der Ahe in fact holds both the Interstate Commerce Commission and Illinois Commerce Commission authorities the firm had certified in its bid that it held. Therefore, the allegation need not be considered further.

Finally, Rut's complains that the IFB was defective as issued because it did not incorporate a wage determination from the Department of Labor, and that the firm brought this to the contracting officer's attention. We believe the issue is untimely raised, as it involves an alleged solicitation impropriety apparent prior to bid opening which must be protested to either the contracting agency or this Office before the time set for opening bids in order to be considered. Grace Industries, Inc., B-216224, Sept. 6, 1984, 84-2 CPD ¶ 262. Contrary to Rut's position, the Air Force asserts that the contracting officer was not

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contacted by the firm prior to bid opening concerning the lack of an incorporated wage determination. Where the only evidence as to what actually occurred in a particular situation consists of the conflicting statements of the protester and the contracting agency, the protester has not met its burden of affirmatively proving that its version of events is the correct one. See Willis Baldwin Music Center, B-211707, Aug. 23, 1983, 83-2 CPD ¶ 240. Since the record only shows that Rut's did not raise the issue until it filed its protest with this Office after bids were opened, the issue is untimely and will not be considered.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel