

**DECISION**



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

**FILE:**

B-219317.2

**DATE:** July 31, 1985

**MATTER OF:**

J.G.B. Enterprises, Inc.

**DIGEST:**

1. Bid on a total small business set-aside which indicates that all supplies to be furnished will not be the product of small businesses must be rejected as nonresponsive, because the bidder otherwise would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.
2. A bid rendered nonresponsive by an alleged mistake cannot be corrected after bid opening to make it responsive.

J.G.B. Enterprises, Inc. (JGB), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA700-85-B-0364, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), for hose assemblies.

We dismiss the protest without obtaining a report from the contracting agency, or holding a conference on the matter as requested by the protester, since it is clear from the information provided by JGB that the protest is without legal merit. See 4 C.F.R. § 21.3(f) (1985).

The IFB contained the standard Small Business Concern Representation provision set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219 (1984). In clause K03, which requires two responses, JGB checked the box indicating that it was a small business concern, but also checked the box indicating that not all supplies to be furnished would be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. DLA rejected the bid as nonresponsive.

A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. FAR, 48 C.F.R. § 14.301. The certification concerning the

032734

bidder's obligation to furnish products manufactured by a small business concern is a matter of bid responsiveness because it involves a performance commitment, and the bidder's intention to furnish such products thus must be established at the time of bid opening. Otherwise, the small business contractor could defeat the purpose of the set-aside program by furnishing products from either small or large business firms as its own interests might dictate. See Ginter Welding Inc., B-218894, May 29, 1985, 85-1 C.P.D. ¶ 612.

JGB points out that it indicated in the bid that it is a small business; that it listed its own plant as the place of performance in clause K30; and that in the Walsh-Healey certification, clause K11, it represented that it was the manufacturer of the supplies to be furnished under the contract. JGB contends that the certification that not all supplies would be produced by a small business therefore was an apparent error that it should have been allowed to correct.

Initially, we note that in clause K30 JGB listed Gates Rubber Co. (Gates) as the hose manufacturer, and JGB as the hose assembly manufacturer. It is not clear why Gates was listed, and there is nothing in the record to show this firm's small business status.

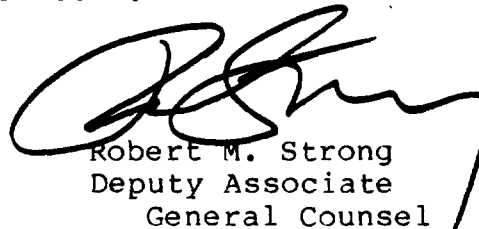
In any event, the place of performance clause in a bid expresses only a present intent to produce the commodities at the specified facilities. The purpose of the clause is informational and relates solely to bidder responsibility, rather than to a performance location commitment. Since a firm is not precluded from changing the designated intended place of performance after bid opening, JGB cannot be said to have assumed a legal obligation to furnish supplies manufactured by a small business merely by virtue of the place of performance clause. Ginter Welding Inc.--Reconsideration, B-218894.2, July 16, 1985, 85-2 C.P.D. ¶ \_\_\_\_.

Further, even if we accept the protester's contention that the Walsh-Healey certification that JGB is the manufacturer, together with the small business certification, constitutes a representation to furnish supplies manufactured by a small business, at best the bid would be

ambiguous, since that interpretation is in direct contradiction to the firm's express certification that the supplies to be furnished will not all be manufactured by a small business. A bid that is ambiguous in a material provision, so that it is nonresponsive under one interpretation and responsive under the other, cannot be accepted. See Sabreliner Corp., B-218033, Mar. 6, 1985, 85-1 C.P.D. ¶ 280.

Accordingly, JGB's bid properly was found nonresponsive because the firm certified that it would not furnish small business products. Moreover, JGB could not, after bid opening, be permitted to correct the certification in clause K03, since the rules that permit bid corrections based on allegations of mistake do not contemplate correction of a bid rendered nonresponsive by the mistake to make it responsive. Public Entity Underwriters, Ltd., B-213745, Sept. 20, 1984, 84-2 C.P.D. ¶ 326.

The protest is dismissed.



Robert M. Strong  
Deputy Associate  
General Counsel