



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Conveyor Handling Company, Inc.; Joseph Allan Company
File: B-222889, B-222869.2
Date: July 22, 1986

DIGEST

1. Bid on a total small business set-aside which indicates that not all supplies to be furnished will be manufactured or produced by a small business concern 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. Protest filed more than 10 working days after protester received denial of protest filed initially with contracting agency is untimely and not for consideration by our Office.

DECISION

Conveyor Handling Company, Inc. (Conveyor), and Joseph Allan Company (Allan) protest the rejection of their bids to supply decked cantilevered racks under Department of State invitation for bids (IFB) No. 1027-00018. The agency rejected the bids because they did not contain a required certificate of conformance (certificate) assuring that the offered racks conformed with either the American Iron and Steel Institute or the American Iron and Steel Construction standards.

We dismiss the protests.

Conveyor argues that its bid did contain a proper certification since it offered Interlake, Inc. racks, indicated that the place of performance was the Interlake, Inc. plant, and included Interlake, Inc. descriptive literature clearly stating the the Interlake racks met the required standards. In addition, Conveyor points out that the IFB also required the submission of a certificate with the racks, and contends that the certificate therefore was not necessary at bid opening. Allan states that its bid was rejected for the same reason that the agency rejected Conveyor's, and that its bid also included a certificate from its subcontractor.

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We need not consider the protest basis advanced by Conveyor since our review of its bid reveals that the bid was nonresponsive for another reason. See Gladix Corp., B-222012, Mar. 11, 1986, 86-1 CPD ¶ 241. The IFB totally set aside the procurement for small business concerns and incorporated by reference the "Notice of Total Small Business Set-Aside," which states that the bidder agrees to furnish only end items manufactured/produced by small business concerns. See Federal Acquisition Regulation, 48 C.F.R. § 52.219-6 (1985). The IFB also required bidders to certify (by checking the appropriate response in the "Small Business Concern Representation" clause) either that all or not all of the supplies to be furnished would be manufactured or produced by a small business concern. Conveyor checked that not all of the supplies would be manufactured or produced by a small business concern.

A bid on a total small business set-aside must establish the bidder's legal obligation to furnish supplies manufactured or produced by a small business concern. J.G.B. Enters., Inc., B-219317.2, July 31, 1985, 85-2 CPD ¶ 109. Otherwise, the purpose of the small business set-aside would be defeated because the contractor would be able to furnish supplies from a large business. For this reason a bid that fails to represent that the supplies of a small business manufacturer will be furnished must be rejected as nonresponsive. Id.; Wippette International, Inc., B-216304, Sept. 18, 1984, 84-2 CPD ¶ 322.

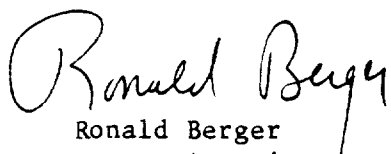
Even though the IFB contained language indicating that bidders agreed to furnish end items manufactured/produced by small businesses, Conveyor's bid also indicated that not all supplies would be so manufactured or produced. At best, the bid was ambiguous regarding whether Conveyor intended to comply with the requirement. A bid that is ambiguous regarding whether supplies will be manufactured or produced by a small business must be rejected. J.G.B. Enters., Inc., B-219317.2, supra. Thus, Conveyor's bid would have to be rejected irrespective of the merits of its protest.

Allan's protest is untimely. Allan originally protested the rejection of its bid with the contracting agency. The agency's denial of this protest was received by Allan on April 18, 1986, and Allan protested to our Office on May 13. If a protest has been initially filed in a timely manner with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after notification of the initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3) (1986). The Allan protest clearly was not filed with our Office within 10 working days after April 18 when Allan received the agency's denial of its protest.

Allan argues that timeliness is a mere technicality and should not preclude our consideration of its protest on the merits. We consider bid protest under the authority of section 2741(a) of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (Supp. II 1984), which requires the Comptroller General to prescribe procedures necessary for

the expeditious decision of protests. Our timeliness rules reflect that requirement--they are designed to give parties a fair opportunity to present their cases and have them expeditiously resolved without unduly disrupting or delaying the procurement process. Our consideration of the protest at this time would not be consistent with that purpose.

The protests are dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the printed name and title.

Ronald Berger
Deputy Associate
General Counsel