

ZUCKERMAN



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J.T. Racing Inc.

File: B-224760

Date: September 30, 1986

DIGEST

Bid received under total small business set-aside that represented that the bidder was a small business but that not all supplies to be furnished would be manufactured by a small business is not responsive and may not be considered for award.

DECISION

J.T. Racing Inc., protests the rejection of its bid by the Defense Logistics Agency (DLA) as nonresponsive under invitation for bids (IFB) No. DLA100-86-B-U594. DLA rejected the bid because the bid indicated that not all supplies to be furnished under the contract would be manufactured by a small business.

We dismiss the protest.

The solicitation is for the acquisition of a quantity of goggles. The IFB contained the standard Small Business Concern Representation set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219-1 (1985). In this representation, the protester checked one box to indicate that it was a small business concern, but checked another box that indicated that "not all supplies to be furnished will be manufactured or produced by a small business concern" As a result, DLA rejected the bid as nonresponsive.

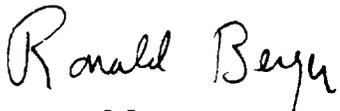
J.T. Racing argues that it indicated that not all supplies would be manufactured by a small business concern because it had to purchase the snaps from a large business. The goggles themselves, however, as the end items to be furnished under the contract, would apparently be produced by J.T. Racing.

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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. See FAR, 48 C.F.R. § 14.301 (1985). Under a small business set-aside, the contractor must furnish supplies manufactured or produced by a small business. Thus, the bidder's intention to deliver products manufactured by a small business must be established at the time of bid opening and must be unequivocal for the bid to be responsive. Otherwise, the small business contractor could defeat the purpose of the set-aside program by delivering products from either small or large business firms as its own interest might dictate. Ginter Welding Inc., B-218894, May 29, 1985, 85-1 CPD ¶ 612. Here, because J.T. Racing represented that not all of the supplies to be furnished would be manufactured or produced by a small business concern, the bid did not legally obligate the firm to furnish small business products as required by the set-aside, and its rejection as nonresponsive was proper.

The protester argues that the IFB clause is ambiguous, and, therefore, that it interpreted the small business certification to apply to the components that would be used in manufacturing the end items to be supplied to DLA under the contract, not the end products themselves. We find no merit to this assertion. Included in the Small Business Concern Representation is a statement that the term supplies "as used [in the Small Business Concern Representation] means the end item to be delivered under any resultant contract." We fail to see how the clause can be considered to ambiguous in light of this provision.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel