



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Insinger Machine Company

File: B-234622

Date: March 15, 1989

DIGEST

While failure to complete the size status certification in a total small business set-aside is a waivable or correctable omission, failure to indicate that all end items to be furnished would be produced by small business renders a bid nonresponsive.

DECISION

Insinger Machine Company protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA400-89-B-0194, a total small business set-aside, issued by the Defense Logistics Agency (DLA) for dishwashing machines. Insinger claims that its failure to complete the small business certifications was an immaterial defect which did not render its bid nonresponsive.

We dismiss the protest.

The IFB contained the small business certifications set forth in Federal Acquisition Regulation § 52.219-1. Insinger failed to complete the certifications indicating that it is a small business concern and that all end items to be furnished under the contract will be manufactured or produced by small business concerns. As a result, DLA found Insinger's bid nonresponsive. Insinger claims that its failure to complete the small business certifications was an inadvertent mistake on its part which is an immaterial defect only and should not affect the responsiveness of its bid.

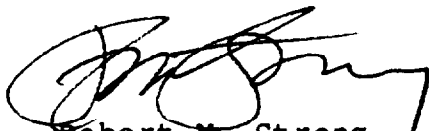
As to the failure to certify itself as a small business concern, Insinger is correct. We have consistently held that the failure to certify size status does not affect the bid's responsiveness because that information is not

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required to determine whether a bid meets the IFB's material requirements. Willis B. Simmonds, Inc. & Assocs. and Toomer Electrical Co., Inc., a joint venture, B-226477, Mar. 17, 1987, 87-1 CPD ¶ 41.

However, Insinger's failure to complete the end item certification is neither waivable nor correctable. The end item certification is a matter of bid responsiveness because it involves a performance commitment by the bidder. Jarke Corp., B-231858, July 25, 1988, 88-2 CPD ¶ 82. Where a bid on a total small business set-aside fails to establish the bidder's legal obligation to furnish end items manufactured or produced by a small business concern, the bid must be rejected; otherwise a small business contractor would be free to provide the end items from either small or large businesses as its own interests might dictate, thus defeating the purpose of the set-aside program. Wright Tool Co., B-223821, Aug. 21, 1986, 86-2 CPD ¶ 211. Therefore, Insinger's bid was properly rejected as nonresponsive.

The protest is dismissed.



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