

Delenda



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delta Marine, Inc.
File: B-234169
Date: March 31, 1989

DIGEST

Bidder's failure to certify that only end items that are manufactured or produced by small business concerns will be furnished does not affect the responsiveness of a bid where such small business certification is not required for the type of contract to be awarded.

DECISION

Delta Marine, Inc., protests the rejection of its low bid as nonresponsive and the award of a contract to Braswell Shipyards, Inc., under invitation for bids (IFB) No. DTCG80-89-B-00018, a total small business set-aside, issued by the Coast Guard for the drydocking and repair of the vessel, "Smilax." The agency rejected Delta Marine's bid because the firm failed to certify that all end items to be furnished under the contract would be manufactured or produced by small business concerns. We sustain the protest.

At bid opening on December 20, 1988, the agency received four bids; Delta Marine was the low bidder. Because Delta Marine failed to certify that all end items to be furnished under the contract would be manufactured or produced by a small business concern, the agency found its bid nonresponsive. The contract was awarded to the next low bidder, Braswell, on January 6, 1989. Delta filed this protest with our Office on January 17. Because the protest was not filed within 10 calendar days of the award, the Coast Guard was not required to, and did not, suspend performance under the contract. See 31 U.S.C. § 3553(d)(1) (Supp. IV 1986).

The IFB includes Federal Acquisition Regulation (FAR) clause 52.219-1, small business concern certifications. This clause contains the end item certification which is in dispute here. Delta Marine claims that neither it nor any

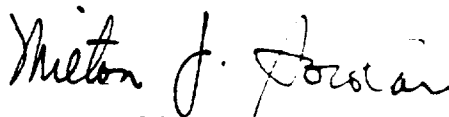
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other small business bidder can truthfully complete the certification because to its knowledge no small businesses manufacture some of the materials to be used in the repair of the vessel such as steel and brand name engine parts. In response, the agency states that the end item to which the certification pertains is the repaired vessel itself, not the individual parts used in performing the repairs. Whether the certification was intended to apply to the vessel itself or the individual parts used by the contractor is not the dispositive issue, however, since, as explained below, the certification is not required for the type of contract to be awarded under the IFB.

The IFB incorporates the standard Notice of Small Business Set-Aside clause, which states that the end item certification requirement does not apply to construction or service contracts. FAR § 52.219-6(c). Since the procurement here is for drydocking and repair services, and the award of a supply contract is not contemplated, the end item certification does not apply. Century Marine Corp., B-233574, Mar. 3, 1989, 89-1 CPD ¶ _____. Accordingly, Delta Marine's failure to complete the certification does not affect the responsiveness of its bid. BCI Contractors, Inc., B-232453, Nov. 7, 1988, 88-2 CPD ¶ 451.

In view of our finding that the Coast Guard improperly rejected Delta Marine's bid as nonresponsive for failure to complete the end item certification, we sustain the protest. As noted above, because the protest was not filed within 10 days after award was made, the Coast Guard was not required to suspend performance under the contract. Since the Coast Guard has advised us that performance has been substantially completed, we do not recommend termination of Braswell's contract and award to Delta Marine. However, we find that Delta Marine is entitled to recover its bid preparation costs and the costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988). Delta Marine should submit its claim for such costs directly to the Coast Guard.

The protest is sustained.


for Comptroller General
of the United States