



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aircraft Components Inc.

File: B-235204

Date: August 2, 1989

DIGEST

Contracting agency's rejection of bid as nonresponsive under total small business set-aside solicitation was proper where bidder failed to certify intention to furnish products manufactured or produced by small business concerns; although the solicitation omitted Federal Acquisition Regulation (FAR) clause 52.219-6, "Notice of Total Small Business Set-Aside," which provides that by submitting an offer a bidder agrees to furnish only end items manufactured by small business concerns, bidders were on constructive notice of the Small Business Administration regulations requiring that end items be manufactured or produced by small business concerns.

DECISION

Aircraft Components Inc. (ACI) protests the award of a contract to Alpha Q, Inc., under invitation for bids (IFB) No. DAAJ09-89-B-0105, issued by the Department of the Army as a total small business set-aside, for helicopter engine manifold assemblies. ACI challenges the Army's rejection of its apparent low bid as nonresponsive.

We deny the protest.

Eight bids were received by bid opening. After the apparent low bidder withdrew its bid, ACI was next in line for award. ACI, however, had not yet received the required source approval for its part. Further, the Army determined that, since the procurement was a total small business set-aside, ACI had rendered its bid nonresponsive by certifying, under Federal Acquisition Regulation clause 52.219-1 "Small Business Concern Representation," that not all end items would be manufactured by small business concerns.

ACI protests the resulting rejection of its bid, pointing out that the Army had omitted from the solicitation Federal

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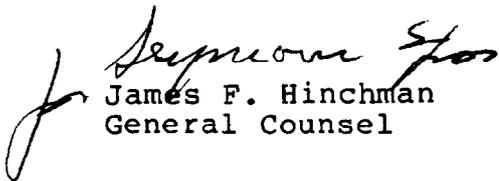
Acquisition Regulation (FAR) clause 52.219-6, "Notice of Total Small Business Set-Aside," which provides that by submitting an offer a bidder agrees to furnish only end items manufactured by small business concerns. According to the protester, in the absence of this clause, the solicitation did not require all end items to be manufactured by small business concerns, and its certification thus did not render its bid unacceptable. We disagree.

As a general matter, where a bid on a 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 a large business, thus defeating the purpose of the set-aside. Propper Manufacturing Co., Inc.; Columbia Diagnostics, Inc., B-233321, B-233321.2, Jan. 23, 1989, 89-1 CPD ¶ 58. Further, responsiveness is determined from the face of the bid at bid opening; post-bid opening explanations, therefore, are unacceptable and cannot be used to cure a nonresponsive bid. Id.

Here, both the synopsis of the procurement published in the Commerce Business Daily (CBD) and the front page of the solicitation informed bidders that the procurement was being conducted as a total small business set-aside. The FAR clause that was omitted from the solicitation merely advises bidders of requirements applicable to a small business set-aside which are independently imposed by the regulations of the Small Business Administration (SBA), 13 C.F.R. § 121.5 (1988). These regulations provide that where an offeror proposes to furnish a product that it did not itself manufacture, in order to be deemed a small business (and thus eligible for award) for purposes of a small business set-aside, the offeror must furnish an end product manufactured or produced by a small business. 13 C.F.R. § 121.5(b)(2). Since the regulations are published in the Federal Register and the Code of Federal Regulations, bidders are on constructive notice of their requirements, which are applicable whether or not the corresponding FAR clause is included in a solicitation. See Delta Systems, Inc.--Request for Recon., B-232235.2, Sept. 23, 1988, 88-2 CPD ¶ 282 (protester's purported complete reliance on provisions of solicitation, which failed to include the appropriate FAR clause relating to limitations on subcontracting, was unreasonable, since protester was on constructive notice of the limitations as set forth in SBA regulations regardless of whether the FAR clause was included); see generally, Larry Carlson & Assocs., Inc., B-211918, Nov. 21, 1983, 83-2 CPD ¶ 599.

In any case, it appears from the record that ACI would not have completed the end item certification any differently if the omitted FAR clause had been included. According to the protester, it did not notice the absence of the FAR clause before it prepared its bid, but only after it received notification of the award to Alpha Q and was preparing to file this protest. The protester further states that it certified that all end items would not be furnished by small businesses because it interpreted the pertinent language in the end item certification clause to mean that no end item, either a component or fully assembled unit, could be supplied to the government by other than a small business; since it intended to obtain components from large businesses, ACI states, it indicated that not all end items would be manufactured by small business concerns. ACI has not explained how the presence of the FAR clause that was omitted would have altered its interpretation of the language in the end item certification clause. Thus, the record indicates that the protester was not prejudiced in preparing its bid by the absence of the FAR clause.

The protest is denied.


James F. Hinchman
General Counsel