



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: J. Morris & Associates, Inc.
File: B-259767
Date: April 25, 1995

Lynn G. Morris for the protester.
Michael J. Farr, Esq., Department of the Air Force, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A bidder's representation that it is or is not a small disadvantaged business (SDB) concern is not a matter of responsiveness and an agency may permit the bidder to correct an erroneous SDB self-certification after bid opening where the bidder's actual status is clear.

DECISION

J. Morris & Associates, Inc. protests the proposed award to Concept Development Corporation under invitation for bids (IFB) No. F34650-95-B-0002, issued by the Department of the Air Force for the repair of the Tow Way Area "C" aircraft apron at Tinker Air Force Base, Oklahoma.

The protest is denied.

On October 26, 1994, the Air Force issued the IFB as a total small disadvantaged business (SDB) set-aside. Section K of the IFB incorporated by reference the provisions at Federal Acquisition Regulation (FAR) § 52.219-1, "Small Business Concern Representation," which requires a bidder to represent its status as a small business, and Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7000, "Small Disadvantaged Business Concern Representation," which requires a bidder to indicate membership, if applicable, in any of a list of specified ethnic groups which are generally presumed socially and economically disadvantaged, and to represent its status as an SDB concern.

The Air Force received five bids for bid opening on November 28. Concept Development's bid of \$82,739 was low followed by J. Morris's bid of \$105,844.

Concept Development's bid contained a representation that it was not an SDB concern, which, if true, would render that firm ineligible for award. In this regard, for the fill-in portions of DFARS § 252.219-7000, Concept Development checked the spaces in paragraph (b) indicating that its ownership is Subcontinent Asian American, but in paragraph (c) checked that it is not an SDB concern. For the fill-in portion of FAR § 52.219-1, Concept Development checked that it is a small business concern.

The Air Force determined that the mark in Concept Development's bid indicating that it is not an SDB concern must have been a clerical error, and contacted Concept Development requesting clarification of its bid. Concept Development responded in writing, stating that it had erroneously checked the "is not" response regarding SDB status and confirming that it is an SDB concern. The Air Force has determined that the clerical error was a minor informality that could be corrected after bid opening. No award has been made.

J. Morris alleges that Concept Development's bid is nonresponsive because it indicated that Concept Development was not an SDB concern.

A bid is responsive if it is an unequivocal offer to provide the required product or service in conformance with the material terms and conditions of the solicitation. Mobile Drilling Co., Inc., B-216989, Feb. 14, 1985, 85-1 CPD ¶ 199. Here, there is no question regarding Concept Development's obligation to perform the construction services in accordance with the material terms and conditions of the IFB, and it is clear that correction of Concept Development's self-certification of SDB status has no effect on price, quantity, quality, or delivery. In fact, a question regarding a bidder's self-certification of status under a socio-economic set-aside program does not reflect upon the bidder's commitment to provide the required product or services, but rather relates solely to the bidder's status and eligibility for award under the set-aside program. Washington-Structural Venture, 68 Comp. Gen. 593 (1989), 89-2 CPD ¶ 130; see Lioncrest Ltd., Inc., B-221026, Feb. 6, 1986, 86-1 ¶ 139 (small business set-aside).

¹However, where the certification includes performance requirements designed to accomplish the purposes of a small business set-aside, a bid which fails to include a properly completed certificate regarding the bidder's commitment to comply with the small business or SDB performance requirements is nonresponsive. Hankins Lumber Co., Inc., B-248108, July 27, 1992, 92-2 CPD ¶ 50; Insinger Mach. Co.,
(continued...)

Thus, any error in Concept Development's self-certification of status is not a matter of bid responsiveness and, so long as there is no question concerning that firm's actual status, this certification can be corrected as a minor informality pursuant to FAR § 14.405.² Id.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

¹(...continued)

B-234622, Mar. 15, 1989, 89-1 CPD ¶ 277. DFARS § 252.219-7000 imposes no such performance requirements.

²Ordinarily, when a bidder miscertifies its socio-economic status so as to render it ineligible for award and then seeks to correct the certification, there is enough doubt as to the bidder's actual socio-economic status to warrant referral of the matter to the Small Business Administration (SBA). See Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542; DFARS § 219.301(b)(i) (agency should refer an offeror's representation as to SDB status to the SBA where there is conflicting evidence). However, here the protester has produced no evidence that indicates that Concept Development is not an SDB, nor did J. Morris timely protest Concept Development's SDB status pursuant to DFARS § 219.302-70 and 13 C.F.R. § 121.1603 (1995). Nevertheless, since award has not been made, if the agency has any doubt about Concept Development's SDB status, this matter should be referred to the SBA for its determination. See DFARS § 219.301(b)(i); Jimmy's Appliance, supra.