

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of Bid Being Rejected as Nonresponsive]
FILE: B-195531 DATE: September 20, 1979

MATTER OF: Jack Young Associates, Inc.

DIGEST:

1. Bid received on total small business set-aside solicitation which failed to indicate whether bidder would furnish products manufactured or produced by small business concerns was properly rejected as nonresponsive.
2. Nonresponsive bid may not be considered for correction regardless of circumstances since to permit bidder to make bid responsive by altering bid after opening would be tantamount to permitting the submission of a new bid.

DLG 02807
 Jack Young Associates, Inc. (Young) protests the award of a contract by the Defense Logistics Agency (DLA) under invitation for bids (IFB) DLA 100-79-B-0752 to J.A. Knitting Mills, the second low bidder. The contract was for 16,104 women's blue sweaters and was 100% small business set-aside. For the reason stated below, the protest is denied.

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DLG 02808

The bids received were opened on July 13, 1979. Young was the low bidder at a unit price of \$6.00 followed by J.A. Knitting Mills at \$6.45. Included in the IFB were the representations completed by Young as follows:

"The offeror represents as part of his offer that:

- "1. Small Business

He is is not a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered he also represents that

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all supplies to be furnished hereunder will will not, be manufactured or produced by a small business concern * * *

"3. Regular dealer - manufacturer

He is a regular dealer in manufacturer of, the supplies offered."
(underscoring supplied)

Since there was no way to determine from the bid itself that Young intended to furnish items manufactured by small business concerns, DLA rejected Young's bid as nonresponsive.

As its bases of protest, Young contends that a DLA investigation would have shown that Young submitted an incomplete copy of its intended bid, and that it intended to furnish items manufactured by small business concerns. Young asserts that it has been the successful bidder on several small business contracts for sweaters in the past and contends that DLA should have known that the end items would be manufactured by small business concerns. Young also states that it has represented itself as a dealer rather than a manufacturer in its bids only because a member of some prior pre-award survey team thought Young should be classified as a dealer since it does not make the complete garment itself. However, Young now believes that since the sweaters are knit on its equipment, it is a manufacturer of the supplies not a dealer, and, as such, would not be required to further stipulate the size status of the manufacturer under the terms of the small business clause, as it is the manufacturer of the supplies. Young thus believes that the omission in its small business representation is minor and could be corrected by the contracting officer. We do not agree.

This Office has consistently held that where a bid on a total small business set-aside fails to establish the intention of the bidder to furnish products manufactured or produced by small business concerns, the bid is nonresponsive and the bidder is

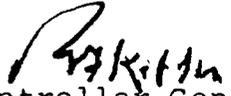
ineligible for award. Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD 149.

Thus, notwithstanding Young's actual intentions, its failure to express them in its bid was sufficient to render the bid nonresponsive. This is so because in the absence of such a stipulation, a small business bidder would be free to provide the supplies from either small or large business manufacturers as its private business interests might dictate. While a small business may subcontract with a large business under a total small business set aside contract, small business must make a "significant contribution" to the manufacture of the goods, Fire & Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415, and its obligation to do so must be apparent from the bid itself, not from information received after bid opening. See Mil-Pac, Inc., B-181717, October 8, 1974, 74-2 CPD 196.

Likewise Young's present belief that it is a manufacturer, not a dealer in this case, cannot be considered to alter its express representation in its bid to the contrary, since under the circumstances that representation must be considered to be material. In this respect, under the small business clause quoted above, only a bidder which was "not the manufacturer of the supplies offered" would be required to represent the size status of the manufacturer. Thus a small business manufacturer which failed to make its representation in its bid would be legally bound to manufacture the supplies in its own facilities. Hence if Young had properly represented itself as a manufacturer, its bid would have been responsive. In this respect we have often held that a nonresponsive bid may not be considered for correction regardless of the circumstances since to permit a bidder to make its bid responsive by alteration of its bid after bid opening would be tantamount to permitting the submission of a new bid. Atlantic Research Corporation, B-179641, February 25, 1974, 74-1 CPD 98. In addition, Young's assertion that it represented itself as a dealer rather than a manufacturer because of what it implies was the erroneous advice of

a Government employee, does not alter our conclusion that its bid was properly rejected, as the Government is not responsible for the erroneous actions of its employees even if committed in the performance of their official duties. Mrs. Tony Zapata, B-194624, May 30, 1979, 79-1 CPD 383.

The protest is denied.


Deputy Comptroller General
of the United States