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DECISION



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

FILE: B-221807 **DATE:** April 15, 1986
MATTER OF: C&C Supply Company, Inc.

DIGEST:

Protest based upon alleged improprieties in a solicitation which is apparent prior to bid opening is dismissed where protest was not filed until after bid opening and award. 4 C.F.R. § 21.2(a)(1) (1985).

C&C Supply Company, Inc. (C&C), protests the rejection of its bid on invitation for bids (IFB) DLA500-86-B-0382, issued by the Defense Logistics Agency's Defense Industrial Supply Center (DISC), for wide flange section, carbon steel.

We dismiss the protest.

DISC rejected C&C's bid as nonresponsive because C&C had inserted the word "privileged" adjacent to the name and location of the manufacturing facility where the supplies it offered were to be produced. The solicitation included clause D-21, which reads as follows:

"Manufacturing or Production Information/Sealed Bid Acquisition (May 1985) (DLAR) § 52.217-9004

"If Bids are submitted which fail to provide the actual manufacturing/production source(s) for the item(s) offered, or, if such information is provided but restricted from disclosure (by the inclusion of the FAR 52.215-12 legend or any other proprietary or confidentiality restriction) such bids will be rejected as nonresponsive."

C&C states that clause D-21 is inconsistent with the Federal Acquisition Regulation (FAR) as it effectively bars an offeror from restricting disclosure as permitted by FAR § 52.215-12 (1984). C&C contends that the name of its supplier is competition sensitive information and should not be disclosed to other bidders. Further, C&C argues that by stating that the identity of its supplier is privileged does not make its bid nonresponsive here since C&C has been awarded contracts in the past from DISC even though "privileged" was inserted adjacent to the name of the manufacturing facility. Finally, C&C points out that even

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though it stated that the name of its supplier was privileged, DISC has released the name to C&C's competitor. C&C argues that this shows that the use of the word privileged does not restrain the government from disclosing C&C's supplier's identity and therefore there is no legal basis for the rejection of its bid as nonresponsive.

C&C's protest is, in effect, a protest against the existence in the solicitation of clause D-21 and of its application to C&C's bid. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1985). Despite C&C's protestations to the contrary, clause D-21 clearly required the unrestricted disclosure of manufacturing production sources. Accordingly, its protest that clause D-21 is improper is untimely as it was not filed until after bid opening. If C&C objected to the presence of clause D-21, it should have filed its protest before bid opening.

Moreover, the fact that DISC, subsequent to bid opening and pursuant to a Freedom of Information Act request, released the name of C&C's manufacturer to a competitor does not negate the fact that the solicitation required that no restriction be placed on the manufacturer's identity. At the time of bid opening, C&C had not complied with the requirement that the disclosure of its manufacturing production source not be limited in any way and its bid therefore was properly found nonresponsive.

Finally, DISC disputes C&C's allegations that bids bearing the notation "privileged" have been accepted after the effective date of clause D-21. However, whether such bids were accepted is of no consequence to this procurement as previous improper awards do not justify repetition of the same error in subsequent procurements. Richard N. Stockebrand, B-220218, Sept. 24, 1985, 85-2 C.P.D. ¶ 332.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel