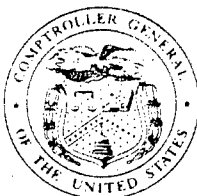


14969 = Mr Alkon

Protest

DECISION



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

[Protest of Army Contract Award]

FILE: B-199934

DATE: September 22, 1980

MATTER OF: Keco Industries, Inc.

DIGEST:

1. Whether awardee is a "small business" or "manufacturer" is for determination by Small Business Administration, not by GAO.
2. Protest based on assumption that SBA Size Appeals Board will rule awardee is not small business concern and that it would follow that awardee certified itself as small in bad faith is dismissed as premature, particularly where SBA regional office found awardee to be small.
3. Invitation requirement that bidder indicate in its bid its production point generally involves matter of bidder responsibility, not bid responsiveness.
4. Allegation that bidder is nonresponsible because it indicated in its bid that production would occur at one location, but later changed production point to more adequate facilities, is not for review by GAO, which does not review contracting officer's affirmative determination of responsibility except in circumstances not present here.

Keco Industries, Inc. (KECO) protests the award of a contract by the U.S. Army Troop Support and Aviation Materiel Readiness Command to the Crippen and Graen Corporation (CGC) under invitation for bids (IFB) No. DAAJ09-80-B-5116. The protester alleges that CGC is not a small business, is not the manufacturer of the

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items being procured under the IFB, as required by the Walsh-Healey Act, 41 U.S.C. § 35-45 (1976), is not a responsible bidder, and did not submit a responsive bid.

KECO reports that CGC's status as a small business and manufacturer is being considered by the Small Business Administration's (SBA) Size Appeals Board in response to KECO's appeal from an SBA regional determination that CGC is a small business manufacturer for this procurement. It states that it expects the Appeals Board to rule in its favor and that this Office should then rule that the award to CGC is void because of CGC's "intentional misrepresentation" of its size status.

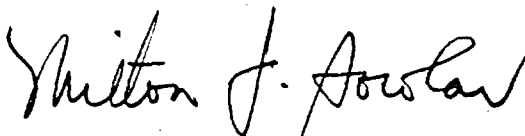
With respect to the responsiveness of CGC's bid and CGC's responsibility, KECO states that CGC's bid specifies a particular location for the production facility to be used, that this facility is inadequate, and that after bid opening CGC satisfied the contracting officer that other facilities to be utilized were adequate. Because the IFB required "offerors [to] stipulate in their offer the plants where the work is to be performed," KECO asserts that CGC's failure to specify in its bid the place where production would be performed rendered its bid nonresponsive and CGC nonresponsible.

This Office does not review size status protests since 15 U.S.C. § 637(b) (1976) empowers the Small Business Administration (SBA) to conclusively determine matters of small business size status for Federal procurements. A&R Window Cleaning & Janitorial Service, Inc., B-197612, March 28, 1980, 80-1 CPD 231. Neither do we consider whether a bidder is a manufacturer within the meaning of the Walsh-Healey Act, as that by law is for the contracting agency's determination, subject to review by the SBA (when a small business is involved) and the Secretary of Labor. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66. Although an award based on a bad faith certification by a bidder is invalid, Bancroft Cap Co., Inc., et al., 55 Comp. Gen. 469 (1975), 75-2 CPD 321, a protest based on such an assertion at this point, particularly in view of the SBA regional ruling that CGC is a small business, is at best premature.

We do not agree that CGC's bid was nonresponsive for the reason advocated by KECO. The protester does not state why the IFB required bidders to identify the location of production plants. Usually, the place of production or performance is a matter of bidder responsibility, not bid responsiveness. See, e.g., Advertising Distributors of Washington, Inc., B-187070, February 15, 1977, 77-1 CPD 111. While in a rare instance a requirement in an IFB to specify a place of performance or production may relate to bid responsiveness because of the Government's material need for performance to take place at a certain location, cf., 53 Comp. Gen. 102 (1973); Prestex, Inc., 59 Comp. Gen. 140 (1979), 79-2 CPD 411, there is nothing on the face of the documents submitted by KECO which suggests that the requirement here could be a responsiveness matter, and KECO has not provided any other information which could provide any basis for our viewing the requirement as one going to responsiveness.

Similarly, KECO merely states, but does not explain why, CGC's "failure to list the production facilities [it would actually use] makes CGC nonresponsible." In any event, we do not consider a contracting officer's affirmative determination of responsibility unless there is a showing of possible fraud or bad faith or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. Neither exception appears to exist here.

Accordingly, this protest is dismissed in part and summarily denied in part.



For the Comptroller General
of the United States