

DOCUMENT RESUME

03009 - [A2093170]

[Protests to Nonresponsibility Determination, Denial of Certificate of Competency, Awardee's Small Business Size, and Solicitation Ambiguity]. B-188856. July 22, 1977. 3 pp.

Decision re: United States Crane Certification Bureau, Inc.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: General Services Administration.
Authority: 15 U.S.C. 537(b) (6-7). F.P.R. 1-1.1203 et seq. 4
C.F.R. 20.2(b) (1). B-186840 (1976). B-187243 (1976).
B-185422 (1976).

Protest was made concerning denial of Certificate of Competency, the awardee's qualification as a small business and responsibility, and ambiguous invitation for bids. GAO will not review Small Business Administration's denial of Certificate of Competency nor question the small business size of a firm. Similarly, allegations about bidder nonresponsibility are reviewed only in limited circumstances not obtaining here. Allegation as to solicitation ambiguity was untimely and was not considered. The protest was denied. (Author/DJM)

3178

03009

DECISION



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

P.L. I
HASfurther

FILE: B-188856

DATE: July 22, 1977

MATTER OF: United States Crane Certification Bureau, Inc.

DIGEST:

1. Where small business concern is found to be nonresponsible bidder by contracting activity, subsequent denial of COC by SBA is viewed as affirmation of nonresponsibility determination, and GAO does not review COC determinations and will not require SBA to issue COC or reopen case absent a showing that material evidence was not considered.
2. Questions concerning small business size status are not for consideration by GAO since authority over such matters is vested by statute in SBA.
3. Contention that proposed awardee is not responsible will not be reviewed by GAO except under limited circumstances not here alleged.
4. Allegation that invitation was ambiguous and vague is untimely filed and not for consideration since apparent improprieties must be raised prior to bid opening.

United States Crane Certification Bureau, Inc. (U.S. Crane), protests the failure of the General Services Administration (GSA) to award it a contract on item G of Service Area 1 under invitation for bids No. GSW-4FWR-70014. GSA made no award to U.S. Crane because it determined that firm not to be a responsible bidder for the procurement. U. S. Crane further protests that the next low bidder--the proposed awardee--for item G is not a small business as is required in the invitation and that it is also nonresponsible due to its lack of sufficient finances and its inadequate facilities, tooling, storage space, and capacity. Finally, it is contended that portions of the invitation are ambiguous and vague and that the invitation, consequently, should be rewritten and reissued.

B-188856

As regards the first issue, after GSA found U. S. Crane to be nonresponsible the matter was referred to the Small Business Administration (SBA) for a Certificate of Competency (COC) review. The SBA declined to issue a COC to U. S. Crane. Our Office will not question a contracting officer's determination that a small business concern is nonresponsible where that determination has been affirmed by the SBA through the denial of a COC. Further, under 15 U.S.C. § 637(b)(7) (1970), the SBA has the authority to issue or deny a COC, and our Office does not review an SBA determination, require the issuance of a COC, or request the reopening of a case where a COC has been denied and there is no indication that evidence materially affecting the denial was not taken into consideration. Drexel Industries, Inc., B-136840, November 22, 1976, 76-2 CPD 439.

With respect to the contention that the proposed awardee does not qualify as a small business, the SBA is empowered under 15 U.S.C. § 637(b)(6) (1970) to determine the size status of business concerns on procurements set aside for small businesses. Determinations made under this conclusive and exclusive SBA authority are not subject to review by our Office. Inflated Products Co., Inc.; La Crosse Garment Manufacturing Company, B-187243, December 14, 1976, 76-2 CPD 485; Carz, Inc.; Bethune Quilting Company, B-185422, January 29, 1976, 76-1 CPD 63.

Regarding the dispute over the contracting activity's finding the second low bidder to be responsible, our Office no longer reviews affirmative determinations of responsibility except for actions by procurement officials which are tantamount to fraud or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Inflated Products Co., Inc.; La Crosse Garment Manufacturing Company, supra. Fraud has neither been alleged nor demonstrated by the protester. Nor does the second exception apply. While U. S. Crane does note several paragraphs in the solicitation wherein bidders are notified that GSA has the right to make a preaward survey on the successful bidder and thus inquire into the sufficiency of the bidder's tooling, work and storage capacity, and financial position, these are merely a recitation of those factors normally looked into on any preaward survey--see section 1-1.1203 et seq. of the Federal Procurement Regulations (1964 ed. amend. 95). As regards solicitation paragraph 27 cited by the protester, this again deals with the sufficiency of the contractor's

B-188856

facilities and with the rights and duties of the Government and the contractor after award of a contract--surely not matters of responsibility. These noted paragraphs do not constitute definitive responsibility criteria.

Finally, our Bid Protest Procedures, specifically 4 C.F.R. § 20.2(b)(1) (1976 ed.), provide that protests against alleged improprieties in an invitation for bids which are apparent prior to bid opening must be filed prior to bid opening in order to be considered. Since the alleged ambiguity and vagueness of the invitation language and/or requirements were matters apparent prior to bid opening and since the protest on those matters was not filed until after bid opening, this portion of the protest is untimely filed and, therefore, not for consideration.

Accordingly, the protest is denied.

Milton A. Doolan
for Paul G. Dentling
General Counsel