

DECISION



15092 *Gannicelli*
DET
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of Air Force Contract Award]

FILE:

B-199349

DATE: October 7, 1980

MATTER OF:

Towson Industrial Maintenance Corp.

DIGEST:

1. Certificate of "Independent Price Determination" was not violated absent probative evidence of collusion between bidders or indication that firm was prevented from bidding.
2. Protest concerning small business size status of awardee will not be considered since by law Small Business Administration (SBA) is empowered to conclusively determine such matters, and SBA found that awardee was small business.
3. Protest (alleging that awardee's bid should have been rejected as nonresponsive because bid bond accompanying bid did not name awardee as principal) is denied. Examination of bid bond shows that awardee was properly named as principal.
4. Protest filed in GAO more than 10 days after basis was known to protester is untimely and will not be considered on merits.

*[*Towson Industrial Maintenance Corp. (TIMCO) protests against award of a contract to Ravenswood Industries, Inc. (Ravenswood), by the Department of the Air Force pursuant to invitation for bids No. F04606-80-B-0001. *The solicitation, a 100-percent small business set-aside,* was issued by McClellan Air Force Base on April 11, 1980, and *called for maintenance and repair of radomes throughout the world.* Award was made to Ravenswood on or about August 13, 1980.

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The protest is dismissed in part and denied in part.

TIMCO alleges that, on the bid opening date, the president of Ravenswood was the vice president and general manager of TIMCO. TIMCO argues that, because of this common employee/officer, Ravenswood was privy to TIMCO's bid price. Thus, TIMCO contends that Ravenswood falsely certified that its bid price was determined independently and violated laws against collusive bidding. This point of TIMCO's protest is denied. Even if TIMCO and Ravenswood employed the same person at the time their bids were submitted, this circumstance alone would not provide a basis for legal objection to the award to Ravenswood. Both bidders certified that their bid prices were reached independently. The purpose of the IFB's "Independent Price Determination" clause is to assure that the bidders do not collude among themselves to set prices or restrict competition by inducing others not to submit bids. While the transfer of an employee from one bidder to another, or even employment of a common employee, indicates the possibility of collusion, absent probative evidence, we are unable to conclude that the clause was violated. Here, TIMCO has not alleged that collusion occurred between bidders or that any firm was prevented from bidding.

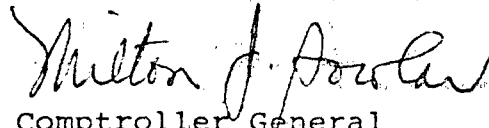
The second issue of protest is based upon financial affiliations which Ravenswood allegedly had with the individuals who signed Ravenswood's bid bond as sureties. TIMCO contends that, because of these alleged financial relationships, Ravenswood was a large business and, therefore, ineligible for award of this small business set-aside. On August 5, 1980, the Atlanta Regional Office of the Small Business Administration (SBA) determined that Ravenswood was a small business eligible for award under the \$12 million size standard of the present invitation for bids. Under 15 U.S.C. § 637(b) (1976) the SBA is empowered to conclusively determine such matters. Accordingly, our Office does not review the SBA's determinations on size status. Advance Building Maintenance Co., B-198967, June 10, 1980, 80-1 CPD 402. Therefore, this protest issue is dismissed.

TIMCO also argues that Ravenswood's bid bond was defective since it did not name "Ravenswood Industries, Inc.," as the principal whose bid was covered by the bond instrument. TIMCO concludes that Ravenswood's bid should have been rejected as nonresponsive because of this defective bonding. We do not agree and, therefore, this point of the protest is denied. Our examination of the bid bond submitted with Ravenswood's bid shows that "Ravenswood Industries, Inc.," is clearly printed in the appropriate box for indicating the principal being bonded.]

Finally, the protester contends that the contracting officer's determination that Ravenswood was responsible was made without regard to the responsibility criteria set forth in the Defense Acquisition Regulation. TIMCO argues that the affirmative determination of Ravenswood's responsibility cannot be justified and that the contracting officer has applied the applicable regulations so negligently as to show bad faith or a "situation tantamount to fraud." TIMCO bases this argument on statements made by the contracting officer in an August 8, 1980, document entitled "Request to Award Prior to Resolution of GAO Protest."

We find the issue of Ravenswood's responsibility to be untimely and, therefore, will not consider it on the merits. The August 8 document revealed this basis of protest to TIMCO. In accordance with section 20.2(b)(2) of our Bid Protest Procedures, TIMCO had to file a written protest on this issue within 10 working days of receipt of the August 8 document. At a conference held on this protest at the General Accounting Office (GAO) on September 5, 1980, TIMCO raised this issue for the first time. TIMCO's representatives were told by the GAO attorney at that conference that the issue would not be considered unless filed in writing in a timely manner and that this new issue would have to independently satisfy our timeliness requirements. See James G. Biddle Company, B-196394, February 13, 1980, 80-1 CPD 129. A TIMCO representative stated at the conference that the August 8 document was received by TIMCO on August 29. Since bid protests must be in writing, we judge the timeliness of this issue by the filing of TIMCO's written protest and not on its oral arguments presented on September 5. See National Designers, Inc., B-195353,

B-195354, August 6, 1979, 79-2 CPD 86; LectroMagnetics, Incorporated, B-186867, January 10, 1977, 77-1 CPD 16. Because TIMCO did not file this issue in writing until September 18, 1980, or more than 10 working days after the basis was known to TIMCO, the issue was filed in an untimely manner. Nevertheless, because of the gravity of the charges made by TIMCO, we have reviewed the record and found no evidence of fraud or bad faith on the part of the contracting officer or other procurement officials. Accordingly, no justification exists for making an exception to our timeliness rules in this case.



For the Comptroller General
of the United States