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DECISION



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

[Protest of VA Contract Award]

FILE: B-202781

DATE: April 20, 1981

MATTER OF: Michigan Instruments Corp.

DIGEST:

1. Furnishing of foreign product by small business does not automatically negate its status as small business concern; firm may qualify as small even though item is not completely of domestic origin if it makes significant contribution to manufacture or production of contract end item.
2. Challenge to status of small business furnishing either item with foreign components or foreign end product must be resolved by Small Business Administration, rather than GAO, so protest on basis that firm does not qualify for set-aside will be dismissed.
3. Buy American Act requirement that preference be given to domestic end items is separate and distinct from that for furnishing domestic end items in small business set-aside.

Michigan Instruments Corp. protests the award of four items under invitation for bids No. M1-48-81, issued February 4, 1981, by the Veterans Administration Marketing Center, Hines, Illinois, as a total small business set-aside.

The protester asserts that the apparent low bidder, Medical Devices, cannot be considered a small business because it does not buy any raw materials, i.e., forgings, in the United States. Medical Devices has previously submitted bids on scissors and instruments originating in Pakistan and England to the Defense Personnel Support Center, the protester continues. Acceptance of such a bid, the protester indicates, cannot help the nation achieve full productive capacity and would not be in the interest of our national defense program.

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The solicitation in question defines a small business concern as one which, among other things, agrees to furnish items manufactured or produced by small business concerns in the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

We have previously considered protests involving surgical instruments in which it was contended that in a small business set-aside, the Government should not consider bids in which foreign material or labor was offered. Our holding has been that an indication that a small business will furnish a foreign product does not automatically negate its status as a small business concern. In such cases, a firm may qualify as a small business even though the item it offers is not completely of domestic origin if it makes a significant contribution to the manufacture or production of the contract end item. Therefore, if a bidder indicates that foreign components will be used, the procuring agency should question the extent of foreign involvement and, if appropriate, refer the matter to the Small Business Administration (SBA) for decision. A&P Surgical Co., Inc., B-196843, B-196929, April 8, 1980, 80-1 CPD 262. If a foreign end product is offered, the procuring agency should question the bidder's self-certification as a small business and also refer the matter to the SBA. Ammark Corporation, B-192052, December 21, 1978, 78-2 CPD 428. In either case, any challenge to a small business' status must be resolved by the SBA, rather than by our Office.

As for productive capacity and the national defense, these are policy matters which the Congress has considered and sought to protect by requiring that preference be given to domestic end items under the Buy American Act. This, however, is a separate and distinct requirement from that for furnishing domestically manufactured end items in a small business set-aside. A&P Surgical Co., Inc., supra.

Since this protest deals with a matter not subject to review under our Bid Protest Procedures, 4 C.F.R. Part 20 (1980), we are dismissing it and have not requested or received a report from the Veterans Administration. See Gateway Van and Storage Company, B-198900, July 1, 1980, 80-2 CPD 4.

B-202781

3

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel