

Kratzer

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DECISION



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

FILE: B-199180

DATE: June 19, 1981

MATTER OF: Connelly Containers, Inc.

DIGEST:

1. Allegation that firm does not have adequate facilities to perform contract concerns affirmative responsibility determination which will not be reviewed absent showing of fraud on part of procuring officials. Protester has not demonstrated such fraud.
2. Protester's exclusive remedy for agency denial of request for documents under Freedom of Information Act is appeal to courts.
3. Awardee compliance with terms of contract is matter of contract administration which is responsibility of procuring activity and not for review by GAO.
4. Awardee under small business set-aside need only make significant contribution to production of end product; therefore, fact that some manufacturing effort may be by large business is not improper.

Connelly Containers, Inc. (Connelly) protests the award of a contract to Corrofab Incorporated (Corrofab) under invitation for bids (IFB) 3904-DM-NY, issued by the General Services Administration (GSA). The solicitation was a total small business set-aside for corrugated fiberboard boxes. Connelly essentially contends that Corrofab cannot manufacture the boxes, that in actuality a large business will do so, and that award was the result of collusion between procurement officials and Corrofab to divert the procurement to a large business source. We deny the protest.

[Protest of GSA Contract Award]

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Bids were opened on June 6, 1980 and Corrofab was found to be the low bidder. Corrofab had represented in its bid that it was a small business concern and that it was a manufacturer of the goods offered. Connelly filed its protest with our Office on June 8, 1980; GSA then requested a size status determination concerning Corrofab from the Small Business Administration (SBA).

Corrofab, by letter of June 19, in confirmation of a prior telephone conversation, instructed the contracting officer to change the inspection point from Corrofab's premises, as listed in its bid, to the premises of Tri-Wall Container, which is allegedly a large business. The letter also noted that the two small business representations in its bid had to be changed, but did not specify the nature of these changes. Approximately two weeks later, Corrofab again wrote the contracting officer, stating that it was "superseding" all previous correspondence and redesignating Corrofab's premises as the inspection point. GSA took no action with respect to either letter.

In July, the SBA regional office determined that Corrofab qualified as a small business concern for purposes of Government procurement. The SBA Size Appeals Board subsequently found Corrofab to be a small business manufacturer for purposes of this particular procurement. GSA thereafter awarded the contract to Corrofab.

Connelly contends that Corrofab lacks the equipment and conditioning facilities necessary to manufacture, test and inspect the required quantity of boxes in the time frame designated by the IFB. This allegation concerning Corrofab's capabilities relates to its responsibility as a prospective contractor. GSA, after conducting a survey of Corrofab's plant premises, concluded that Corrofab possessed the capability to manufacture the required goods and found Corrofab to be responsible. We do not review affirmative determinations of responsibility unless the solicitation contains definitive responsibility criteria which allegedly have not been applied or the protester makes a showing of fraud on the part of contract officials. Courier-Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323; Illitron, B-192309, August 7, 1978, 78-2 CPD 100. Before we will intervene, a protester must submit evidence establishing a prima facie case of fraud or of such

willful disregard of the facts or such misconduct as to be tantamount to fraud on the part of contracting officials. Fairbanks Bedding Company, B-193425, December 20, 1978, 78-2 CPD 426; Surveillance Systems, B-185562, April 8, 1976, 76-1 CPD 235. Connelly has not submitted such evidence.

Connelly alleges that GSA acted in collusion with Corrofab to impermissibly direct the set-aside to a large business source. To the extent that this assertion constitutes an allegation of fraud on the part of contracting officials, it is unsupported. The only evidence Connelly offers with respect to this serious allegation is the correspondence in which Corrofab attempted to modify its bid. We do not believe that these letters in any way raise an inference of collusion or impropriety on the part of GSA officials. Rather, the letters merely indicate confusion on the part of Corrofab concerning the obligation (to supply goods which it, as a small business has manufactured) which would arise if a contract were awarded to it on the basis of its bid. GSA took no action with respect to the notification that Corrofab desired to modify its bid. Thus, we do not view the letters as evidence of collusion or fraud. Moreover, we do not believe that these letters adversely impacted upon the propriety of the award to Corrofab in any other respect. Whatever impact on Corrofab's bid the initial letter might have otherwise had if it stood was completely nullified by the subsequent revocatory letter.

Connelly questions Corrofab's intent to produce the required boxes in conformity with small business requirements based upon Corrofab's alleged failure to complete one of the IFB representation's relating to small business. This representation provides:

"If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies furnished hereunder [] will, [] will not be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico." (Emphasis supplied.)

Since Corrofab represented in its bid that it was the manufacturer of the supplies offered, it was unnecessary for it to complete this representation.

Connelly apparently attempts to invoke in its favor Iconco v. Jensen Construction Company, 622 F. 2d 1291 (8th Cir. 1980) in which the court addressed several small business set-aside issues. However, except for that portion of the decision which sets forth the general policies underlying the Small Business Act, of which we have always been mindful, this decision is not applicable here.

Connelly requests that we furnish it a copy of the Plant Facilities Report, which GSA submitted to our Office. Connelly's request for this document pursuant to the Freedom of Information Act, 5 U.S.C. 552 (1976), was denied by GSA. We have consistently held that once a party has sought disclosure from an agency and has been denied, its sole remedy is by suit in the United States District Court. See Bannercraft Clothing Co. v. Renegotiation Board, 466 F.2d 345, 358 (D.C. Cir. 1972); Systems Research Laboratories, Inc.--Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341.

Connelly also petitions our Office to require the contracting officer to disclose where the boxes have actually been fabricated and to convene a conference for this purpose. We deny this request because the issue of whether Corrofab has complied with the specifications of the contract is a matter of contract administration which is the responsibility of the procuring activity and is not for review by the General Accounting Office. See C. Engel's Sons, Inc., B-199578, September 2, 1980, 80-2 CPD 167.

The various concerns raised by the protester appear to reflect the belief that the work called for by the contract would be performed by a large business. It may be that a portion of the manufacturing effort involved was performed by a large business. There is nothing improper with that, however; the only requirement is that a significant portion of the work be performed by small business concerns. See Seaward International, Inc., B-199040, January 16, 1981, 81-1 CPD 23; Jazco Corporation, B-193993, June 12, 1979, 79-1 CPD 411 and cases cited therein. Here, SBA found that Corrofab would make a significant contribution to the production of the end product required. The law requires no more.

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The protest is denied.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

Acting Comptroller General
of the United States