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**DECISION**



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

**FILE:** B-214469 **DATE:** April 5, 1984  
**MATTER OF:** Consolidated Devices, Inc.

**DIGEST:**

1. Protest that bidder is incapable of providing products conforming to solicitation requirements is dismissed since it concerns challenge to bidder's responsibility which GAO does not generally review.
2. Failure to complete Buy American certification may be waived as minor informality since omission does not relate to bid responsiveness.

Consolidated Devices, Inc. (CDI), protests the award of a contract to Granco Industries Corporation (Granco) under invitation for bids (IFB) No. MPN-E-M37D3-EZ-F issued by the General Services Administration (GSA) for 149 crowfoot wrench sets. CDI contends that Granco supplied nonconforming wrench sets on a prior contract and that this demonstrates that Granco is either unwilling or unable to manufacture conforming wrench sets. Also, CDI complains that bidders are not bidding on an equal basis since GSA accepted the nonconforming goods under the prior contract and, as a consequence, Granco can reasonably conclude that GSA will accept nonconforming goods under this contract as well. In addition, CDI contends that Granco's failure to complete the Buy American certification precludes GSA from accepting Granco's bid and that Granco falsely represented that it had never had a contract terminated for default.

We dismiss the protest.

First, we believe CDI's protest to be premature, since a preaward survey of Granco has yet to be completed. Moreover, our Office does not review protests concerning a contracting officer's affirmative determination of responsibility, which is largely a business judgment, unless there is a showing of possible fraud or bad faith on the part of procuring officials or that the solicitation contains definitive responsibility criteria which have not been applied. Echelon Service Co., B-209284.2, December 2, 1982, 82-2 CPD 499.

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The solicitation does not contain definitive responsibility criterion and there has been no showing of possible bad faith here. While a bidder's prior performance history and ability are clearly factors to be considered in determining a prospective contractor's responsibility, an affirmative determination of responsibility in the face of unfavorable information may well reflect the contracting officer's business judgment, but is not itself evidence of bad faith. REDM Corporation, B-211197, April 29, 1983, 83-1 CPD 428. Also, CDI's allegation that Granco falsely represented that it had not had a contract terminated provides no basis for relief. The solicitation clearly indicates that this information will be considered in connection with an offeror's responsibility and does not provide a basis for finding the bid nonresponsive.

Furthermore, the question of whether Granco supplies items conforming to the terms of the contract is a matter of contract administration. Diffco, Inc., B-212392, August 1, 1983, 83-2 CPD 149. Although GSA is precluded from awarding a contract under given specifications with the intent of changing to different specifications after award, the fact that GSA previously accepted nonconforming goods from Granco does not demonstrate that the agency intends to accept nonconforming goods under the present solicitation. See, e.g., Garrison Construction Company, B-211539.2, October 31, 1983, 83-2 CPD 515.

Regarding CDI's allegation that Granco's bid should be rejected because the firm failed to complete the Buy American certification, we have held that the failure to complete this provision may be waived since it does not affect the responsiveness of the bid, K.P.B. Industrial Products, Inc., B-210445, May 24, 1983, 83-1 CPD 561, and the effect of leaving the certificate blank is a certification that the product offered is domestic. Aesculop Instruments Corporation, B-208202, August 23, 1983, 83-2 CPD 228.

Accordingly, the protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel