

DECISION

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

FILE: B-220604 **DATE:** October 17, 1985
MATTER OF: Bender Shipbuilding & Repair Co., Inc.

DIGEST:

1. Allegation that a low bidder will be unable to perform a contract in accordance with the terms of the solicitation because the bidder needs to subcontract with other companies and lacks established credit concerns the contracting officer's affirmative determination of the bidder's responsibility which will not be reviewed by GAO except under limited circumstances which have not been alleged.
2. Whether bidder ultimately performs as it agreed to in its bid is a matter of contract administration, which is the function of the contracting agency and not subject to review by GAO.
3. Allegation that a bidder on a small business set-aside procurement does not qualify as a small business because of associations with other companies to perform the contract concerns a determination of small size qualification which is within the exclusive jurisdiction of the Small Business Administration and, therefore, will not be considered by GAO.

Bender Shipbuilding & Repair Co., Inc. (Bender), protests the proposed award of a contract to G. Marine Diesel of Florida Corp. (GMD) under invitation for bids (IFB) No. N62381-85-B-0056, issued by the Military Sealift Command, Department of the Navy, as a total small business set-aside for the overhaul, drydock, and recertification of the Navy ship APACHE. We dismiss the protest under the provisions of our Bid Protest Regulations without securing a report from the Navy since the protest, on its face, concerns issues that our Office will not consider. 4 C.F.R. § 21.3(f) (1985).

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GMD submitted the two low bids for the work under the IFB. Bender was the third low bidder. Bender states that GMD has proposed to perform the work at two shipyards, Tracor Marine, Inc. (Tracor), in Fort Lauderdale, and Norfolk Shipbuilding & Drydock Company (Norfolk) in Norfolk, Virginia.

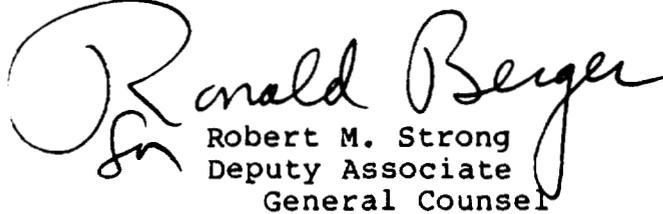
Bender contends that, if GMD's arrangements with these shipyards are in the form of subcontracts, GMD will be unable to comply with the IFB requirement that it perform at least 60 percent of the total work, because of the alleged practice in the industry of having the shipyard perform the vast majority of the work during drydocking. Alternatively, Bender argues that if GMD's arrangements with Tracor and Norfolk are in the form of some other type of affiliation, such as a joint venture, then GMD would not qualify as a small business and would be ineligible for award. Bender also contends that since GMD proposes to perform the work at other facilities over which it has no control, GMD will be unable to comply with the IFB requirements to drydock the ship within 48 hours after the ship arrives at GMD's yards. Finally, Bender contends that GMD lacks established credit and may be financially unable to perform the contract or to furnish performance and payment bonds.

While we have not reviewed GMD's bids, Bender does not allege that GMD took exception to the drydocking or 60-percent requirements, or that its bids otherwise were nonresponsive and thus unacceptable. Bender's contentions that GMD will not be physically or financially able to perform the contract in accordance with the terms of the IFB concern GMD's responsibility. The contracting officer must make an affirmative determination of the bidder's responsibility prior to awarding a contract, and consideration of all aspects of the bidder's ability to perform satisfactorily is part of this determination. Our Office will review such an affirmative responsibility determination only under limited circumstances not alleged here. 4 C.F.R. § 21.3(f)(5); J.D. Bertolini Industries, Ltd., B-219791, Aug. 19, 1985, 85-2 C.P.D. ¶ 193. Further, whether GMD actually performs as promised and as obligated by the government's acceptance of the bid is a matter of contract administration, which is the function of the contracting agency and not subject to review by our Office. 4 C.F.R. § 21.2(f)(1).

Bender's allegation that GMD's affiliations may prevent it from qualifying as a small business also is outside the

purview of our Office. The Small Business Administration, not our Office, has exclusive authority under 15 U.S.C. § 637(b) (1982) to determine matters of small business size status for federal procurement purposes. 4 C.F.R. § 21.3(f)(2); Siska Construction Co., Inc., B-217593, June 26, 1985, 85-1 C.P.D. ¶ 724.

The protest is dismissed.


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General Counsel