

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

FILE: B-222726

DATE: June 3, 1986

MATTER OF: Qualimetrics, Inc.

DIGEST:

1. The Small Business Administration is empowered by statute to determine conclusively matters of size status and eligibility for federal procurements, and the General Accounting Office will neither make nor review such determinations.
2. When proposed awardee intends to supply foreign components originating in a country designated under the Trade Agreements Act, so that the evaluation preference for domestic products in the Buy American Act does not apply, the General Accounting Office will dismiss a protest alleging that the awardee intends to supply a foreign end product or components.

Qualimetrics, Inc., protests the proposed award of a contract to Vaisala, Inc., for first article and production quantities of tactical wind measuring systems. The Sacramento Air Logistics Center, McClellan Air Force Base, California, issued the two-step solicitation, No. FO4606-85-R-0935, on January 22, 1986, as a total small business set-aside.

Qualimetrics contends that the proposed award is improper because Vaisala is a wholly owned subsidiary of a Finnish corporation and, therefore, is not eligible for a small business set-aside. Qualimetrics also alleges that Vaisala will offer a foreign end product, implying that the firm does not qualify for the evaluation preference given domestic products under the Buy American Act, 41 U.S.C. § 10a-10c (1982), and the implementing Federal Acquisition Regulation (FAR), 48 C.F.R. § 25.105 (1984).

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We dismiss the protest.

The Air Force referred the question of Vaisala's eligibility to the Small Business Administration (SBA), which, under 15 U.S.C. § 637(b) (1982), conclusively determines matters of small business size status for federal procurement purposes. On April 18, 1986 (after the protest was filed), the SBA Boston Regional Office determined Vaisala to be a small business concern. By letter of that date, the SBA advised the protester that a foreign-owned concern is eligible to participate in a small business set-aside so long as it meets the definition of "concern" found in the FAR at 48 C.F.R. § 19.101 (1984) and the size standard for the procurement, both of which Vaisala was found to meet. Since such SBA determinations are conclusive, we will not consider this matter. See 4 C.F.R. § 21.3(f)(2) (1985).

Qualimetrics also alleges that because Vaisala is primarily a sales and distribution outlet, without manufacturing capability, it intends to supply a foreign end product or components. In its proposal, Vaisala certified in accord with the standard clause set forth in the FAR, 48 C.F.R. § 52.219-1, that all supplies to be furnished would be manufactured or produced by a small business concern in the United States. In addition, Vaisala completed the Buy American Act certification required by the FAR, 48 C.F.R. § 52.225, without listing any end products of foreign origin. It has obligated itself, therefore, to supply a domestic end product. Whether Vaisala actually intends to comply with the Buy American Act certification is a matter of the firm's responsibility that, as a general rule, we will not review. See 4 C.F.R. § 21.3(f)(5).

Here, following submission of the protest, the contracting officer questioned Vaisala's Buy American Act certification. See *Towmotor Corp.*, B-220871, Mar. 4, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 219. The Air Force informs us that Vaisala has indicated that components that consist of material from Finland represent 11 percent of the cost of each end item, and that a preaward survey indicates that Vaisala will manufacture most of the major components in this country.

In our opinion, however, the determinative factor here is that Finland is a designated country under the Trade Agreements Act of 1979, 19 U.S.C. §§ 2501-2582 (1982), and implementing regulations, and the provisions of the Buy

American Act do not apply to eligible products originating in designated countries when, as here, the total offered price is \$169,000 or more. See FAR, 48 C.F.R. §§ 25.401, 25.402; Presto Lock Inc., B-218766, Aug. 16, 1985, 85-2 CPD ¶ 183.

The protest is dismissed.



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