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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** WorldWide Parts, Inc.

**File:** B-244793

**Date:** August 15, 1991

Charles B. O'Connell for the protester.  
Deborah M. Yoon, Esq., Defense Logistics Agency, for the agency.  
Tania L. Calhoun, Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. The General Accounting Office will not consider whether an offeror qualifies as a "regular dealer" under the Walsh-Healey Public Contracts Act.
2. Offeror, which submits a proposal in its own name without indicating it is acting as an agent for a manufacturer, may not submit evidence after the closing date for proposals to show the agency-principal relationship because to do so, in effect, would constitute an improper transfer of a proposal.
3. Proposal expiration date can be extended by offerors without the necessity of amending a request for proposals.

### DECISION

WorldWide Parts, Inc. protests the rejection of its low-priced proposal, which it asserts that it submitted as an agent for Central Fabricators, Inc., under request for proposals (RFP) No. DLA700-91-R-0669, issued by the Defense Logistics Agency, Defense Construction Supply Center (DCSC), for 22 clamshell buckets. DCSC rejected the proposal because WorldWide did not file for a certificate of competency (COC) with the Small Business Administration (SBA).

We dismiss the protest.

The solicitation was issued on November 7, 1990, with a closing date of December 7, 1990. WorldWide submitted the low-priced offer of \$82,456. Award was made on May 19, 1991, to J.I. Case Co., at a price of \$98,758. By letter dated June 18, WorldWide was apprised that its bid was rejected since it failed to obtain a COC from SBA.

WorldWide's eligibility for award had been referred to SBA for COC consideration because the agency determined that WorldWide was not a "regular dealer" under the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35 et seq. That Act requires that all contracts for the manufacture or furnishing of materials, supplies, articles, and equipment, in any amount exceeding \$10,000, shall be with manufacturers or regular dealers. WorldWide's offer, identifying itself as the offeror, required an agency determination as to WorldWide's status as a manufacturer or regular dealer. Since WorldWide stated in its offer that it was not a manufacturer, DCSC evaluated its offer to ascertain whether WorldWide was a regular dealer. The agency found that WorldWide did not qualify as a regular dealer under Federal Acquisition Regulation (FAR) § 22.606-2 and was ineligible for award.

The agency referred its ineligibility determination to SBA for a COC determination in accordance with FAR §§ 19.601(c), 22.608-2(f)(2). Under the COC program, authorized by 15 U.S.C. § 637(b)(7)(A), SBA may certify to contracting officers that an otherwise qualified small business is an eligible government contractor under the Walsh-Healey Act. See FAR §§ 19.601(c), 22.608-2(f)(2). After a contracting agency refers a matter to SBA for consideration of issuance of a COC it is incumbent on the small business to apply for a COC from SBA in order to avail itself of the protection afforded against unreasonable determinations by the contracting officer. Zan Co., Inc., B-229705, Dec. 15, 1987, 87-2 CPD ¶ 598; see also FAR § 19.602-2(a). WorldWide did not apply for a COC with respect to this solicitation because it asserted it was not a regular dealer.<sup>1/</sup>

We will not review the agency's determination of an offeror's legal status as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act, since this is a matter for determination by the procuring agency, the SBA, and the Secretary of Labor. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)(9)).

WorldWide concedes that it is not a manufacturer or regular dealer under the Walsh-Healey Act, but argues that it was an agent for Central Fabricators. FAR § 22.607 provides that a manufacturer or regular dealer may bid, negotiate, and contract through an authorized agent only if the agency is disclosed and the agent acts and contracts in the name of the principal. WorldWide, however, did not identify itself as an agent for a particular principal but listed itself as the

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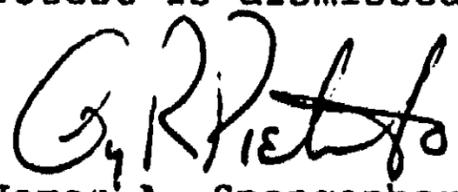
<sup>1/</sup> WorldWide states that SBA had informed it that if it applied for a COC it would not qualify as a regular dealer, so it declined to apply.

offeror, Subsequent to the closing date, WorldWide furnished DCSC with documents indicating an agency relationship with Central. DCSC rejected WorldWide's documentation submitted after the closing date.

Since WorldWide did not identify Central as its principal until after the closing date for the receipt proposals, there was no basis to conclude that Central was the actual intended principal. To permit WorldWide to identify Central after the closing date would, in effect, constitute the transfer of the proposal to an entity other than the named offeror, which was WorldWide. Hay-Holland Co., B-233002, Feb. 1, 1989, 89-1 CPD ¶ 102. An offeror may not transfer or assign a proposal unless the transfer is (1) effected by operation of law, (2) merger, (3) corporate reorganization, (4) sale of an entire business, (5) sale of an entire portion of a business, or (6) some other means which is not barred by the anti-assignment statutes. See Numax Elec., Inc., 54 Comp. Gen. 580 (1975), 75-1 CPD ¶ 21. Thus, DCSC properly rejected the protester's tender of information to show it was a manufacturer's agent.

Finally, WorldWide argues that, because the 60 calendar day proposal acceptance period expired prior to the award to J.I. Case and no amendment extending it was issued, all offers are invalid and the RFP must be reissued. However, the stated period for accepting proposals can be extended without amending the RFP. See Lunmark Realty Co., B-224323, Dec. 1, 1988, 88-2 CPD ¶ 620. Here, the award to J.I. Case was proper since it apparently had extended its proposal acceptance period.

The protest is dismissed.

for   
James A. Spangenberg  
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