



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** American Bristol Industries, Inc.

**File:** B-249108.2

**Date:** October 22, 1992

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Charles L. Lamoreaux for the protester,  
Curtis Newill, Department of the Air Force, for the agency.  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

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## DIGEST

1. Under a brand name or equal solicitation, the proposed awardee's non-brand name item need not conform to those features of the brand name item which are not listed as salient characteristics.
2. Under a brand name or equal solicitation, the agency reasonably determined that the proposed awardee's non-brand name item satisfied the salient characteristic in the solicitation requiring automatic safety controls for a recharging unit.
3. Allegation that the proposed awardee, which certified that it was a small business concern and that all end items would be manufactured or produced by small business concerns, is a "front" for a large business under a total small business set-aside procurement is not for General Accounting Office's (GAO) because the Small Business Administration, not the GAO, has the conclusive authority to determine matters of small business size status for federal procurements.
4. General Accounting Office (GAO) will not consider allegation that the proposed awardee does not intend to comply with the limitations on subcontracting as incorporated in the solicitation because the issue involves a matter of responsibility and contract administration which, under the circumstances of the protest, is not reviewable by the GAO.

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## DECISION

American Bristol Industries, Inc. protests the proposed award of a contract to Allied Marine Services, Inc. under

invitation for bids (IFB) No. F41620-92-B-0008, issued by the Department of the Air Force for a "brand name or equal" combination diesel and electric recharging unit. The protester essentially contends that Allied Marine's offered item is not equal to the protester's brand name item.

We deny the protest.

The IFB, a total small business set-aside issued on a brand name or equal basis, contemplated the award of a contract to the low, responsive, responsible bidder. The IFB specified an American Bristol recharging unit as the brand name item. The IFB listed those features of the specified brand name item which the agency deemed to be salient characteristics and which a non-brand name item would be required to satisfy in order to be considered equal to the specified brand name item. The salient characteristics called for a combination diesel and electric recharging unit with purification system, compressor, automatic controls cylinders and a safety system, among other things. The IFB required firms submitting bids for non-brand name items to furnish descriptive literature so that the agency could determine whether an offered item conformed to the listed salient characteristics of, and was in fact equal to, the specified brand name item.

Four firms submitted bids by bid opening. Allied Marine, which furnished descriptive literature for a Hamworthy USA recharging unit, submitted the apparent low bid of \$29,985. The agency reviewed the descriptive literature furnished by Allied Marine and determined that its non-brand name item conformed to the listed salient characteristics of, and was in fact equal to, the specified brand name item. Pending a decision on this protest, the agency proposes to award a contract to Allied Marine as the low, responsive, responsible bidder.

The protester, which submitted the apparent second low bid of \$36,585, basically alleges in its protest that the Hamworthy recharging unit offered by Allied Marine is not equal to the protester's specified brand name item because Allied Marine's offered item does not conform to features of the protester's brand name item. Specifically, comparing its specified brand name item to Allied Marine's offered item, the protester complains that the purification system on Allied Marine's offered item is constructed of an inferior metal; that the item's engine drive system lacks a clutch; that the placement of the item's engine exhaust system next to the compressor intake represents a safety hazard; that the item does not include a remote compressor inlet extension; and that the item does not have the pressure level capacity equal to the protester's specified brand name item.

The IFB did not require any of the features cited above by the protester. In a brand name or equal procurement, an equal product need only meet the item's salient characteristics listed in the solicitation, not unstated features of the brand name item. Power Conversion Sys., B-246654, Feb. 26, 1992, 92-1 CPD ¶ 235; J.E. Pope Co., Inc., B-238560, May 16, 1990, 90-1 CPD ¶ 478. Since there are no salient characteristics in the IFB addressing the type of metal to be used to construct the required item; because there are no clutch, exhaust system placement, and compression inlet extension requirements; and because there is no requirement that an offered item's pressure level capacity exceed that which is required by the salient characteristics in the IFB, the failure of Allied Marine's offered item to conform to these features, as included on the protester's brand name item, does not provide a basis to reject Allied Marine's bid. Id.

The protester further alleges that Allied Marine's offered item does not have the automatic safety control features called for by the RFP. In determining whether a particular item meets the solicitation's technical requirements set forth as salient characteristics, a contracting agency enjoys a reasonable degree of discretion and we will not disturb its technical determination if it is reasonable. Beckman Instruments, Inc., B-246148.2 et al., Apr. 2, 1992, 92-1 CPD ¶ 340.

Here, the protester does not specify which automatic safety control features listed as salient characteristics in the IFB are not included on Allied Marine's offered item. The salient characteristics in the IFB required, among other features, automatic controls for safety shuts down, check valves, and safety valves. The narrative attached to Allied Marine's bid states that "[i]ncluded in this system are automatic controls for stop/start, safety shutdown, . . . an air pressure switch . . . which shuts down the compressor at a preset pressure . . . an oil pressure switch . . . which shuts down the compressor at the first sign of low oil level . . . [and] [a] high air temperature switch . . . [which] shuts down operation at the first sign of high outlet temperature." The information included in Allied Marine's narrative was confirmed by the information in its descriptive literature which shows that its offered item is equipped with electronic control circuitry and air pressure,

oil level, and high temperature switches. In our view, the agency reasonably determined that Allied Marine's offered item satisfied the salient characteristic requiring automatic safety controls.<sup>1</sup>

The protester also contends that Allied Marine, which certified that it was a small business concern and that all end items to be furnished would be manufactured or produced by small business concerns,<sup>2</sup> is "fronting" for a large business, Hamworthy USA, and therefore is not eligible for award under this total small business set-aside procurement.

To the extent the protester is challenging the size status of Allied Marine, our Office has no jurisdiction to review size determinations. The Small Business Act, 15 U.S.C. § 637(b)(6) (1988), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1992); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71; East Indianapolis Venture, B-234433, Mar. 15, 1989, 89-1 CPD ¶ 276. Thus, we will not review a protester's challenge of another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of competing in federal procurements. Survive Eng'g Co., supra; Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297.

The protester further questions Allied Marine's intention to comply with applicable limitations on subcontracting, including the clause at Federal Acquisition Regulation § 52.219-14, "Limitations on Subcontracting," which was incorporated into the IFB.

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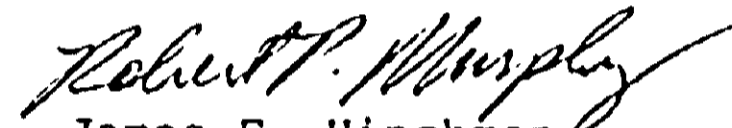
<sup>1</sup>In its initial submissions, the protester also alleged that Allied Marine's offered item did not satisfy other features included as part of the protester's specified brand name item, including the type of trailer assembly used to transport the required item. The agency addressed these matters as part of its agency report. The protester, however, did not respond to the agency's position in its comment submissions to the agency report. Accordingly, we deem these grounds of protest to be abandoned. See All American Moving and Storage, B-243630; B-243804, July 8, 1991, 91-2 CPD ¶ 32; Heimann Sys. Co., Inc., B-238882, June 1, 1990, 90-1 CPD ¶ 520; The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

<sup>2</sup>Allied Marine also certified that it was a regular dealer under the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1988).

Whether or not Allied Marine will comply with the subcontracting limitations concerns a matter of Allied Marine's responsibility which we will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied, 4 C.F.R. § 21.3(m)(1); Mitchell Constr. Co., Inc., B-245884; B-245884.2, Jan. 17, 1992, 92-1 CPD ¶ 92; Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6. Here, the protester has failed to make the required showing.

Further, the issue of Allied Marine's actual compliance with the subcontracting limitations is a matter of contract administration over which we do not exercise jurisdiction since contract administration matters are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the U.S. Claims Court. See 4 C.F.R. § 21.3(m)(1); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228; Mitchell Constr. Co., Inc., supra.

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel