



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

B-175337

JAN 3 1973

Claude Michael  
A Division of Marshall Industries  
9674 Telstar Avenue  
El Monte, California 91731

Attention: Mr. Mike McBride

Gentlemen:

Further reference is made to your letter of February 29, 1972, and subsequent correspondence, concerning the award of a contract dated December 23, 1971, to H. N. Bailey and Associates, under invitation for bids DAAF01-72-B-0504, issued by the United States Army Weapons Command, Rock Island, Illinois, as a total small business set-aside, for the procurement of soldering irons.

Three bids were received and opened on November 3, 1971. The low bid, from Hexacon Electric Company, was found nonresponsive. Your bid, which was next low, represented that the soldering iron would be manufactured by UNGAR, a large business. Since the procurement was a small business set-aside, requiring the items to be manufactured by a small business concern, your bid was rejected as nonresponsive. Since the next low bid, from H. N. Bailey and Associates, included the required small business self certification, it was considered eligible and award was made to Bailey on December 23, 1971. You were notified by the contracting officer of this award by letter dated January 5, 1972.

By letter dated February 29, 1972, you advise the contracting officer that:

"To the best of my knowledge, H. N. Bailey & Associates is also supplying products manufactured by UNGAR in filling this contract.

"Again, to the best of my knowledge, H. N. Bailey & Associates, however, does not disclose that he is making this purchase directly from UNGAR, but from another small business concern called Kit Pack Company located at the same address as H. N. Bailey & Associates, Santa Ana,

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California. Further, I understand that the Kit Pack Company is purchasing these parts from UNGAR on a Kit Pack purchase order and H. N. Bailey & Associates, in turn, is repurchasing them from the Kit Pack Company; thus implying that the parts in question are not being purchased from UNGAR, a large business concern, but from Kit Pack Company, a small business concern.

"Additionally, both companies to the best of our knowledge, are owned and controlled by Harry N. Bailey, who according to Dunn & Bradstreet is listed as president of both companies.

"If the foregoing information is correct, H. N. Bailey & Associates was awarded the Rock Island contract through a technicality that we did not employ, at a price higher than our quotation; consequently, we together with the government and public are penalized by forthrightly disclosing that we were purchasing the specified parts directly from UNGAR, a large business concern."

The same information was included in your letter to our Office.

The record shows, based upon an investigation by the Defense Contract Administration Services District, Anaheim, California, that the H. N. Bailey and Associates Company is a small business manufacturer, but is in fact purchasing the units under a subcontract from the Kit Pack Company, a small business concern separately owned by the same people who own H. N. Bailey, and located at the same address. DCASD further advises that Kit Pack Company is buying patented component parts from Eldon Industries, the parent company of UNGAR, a large business, and manufacturing the soldering tips and totally assembling and packaging the complete units.

Our Office has held that, so long as the small business firm, which has subcontracted a major portion of the work to large business, makes some significant contribution to the manufacture or production of the contract end item, the contractual requirement that the end item be manufactured or produced by small business concerns has been met. See 49 Comp. Gen. 41, 43 (1969), and 39 Comp. Gen. 435 (1959).

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Since the Kit Pack Company, a small business concern, is performing work which significantly contributes to the manufacture of the end items, it is concluded that the end item is, in significant part, produced by small business. Although it appears that H. N. Bailey is not the manufacturer of the item to be supplied under the subject procurement, it was nevertheless qualified for award as a "small business nonmanufacturer" under applicable SBA regulations because it is furnishing the product of a small business concern. See section 121.3-8(b) of the SBA regulations and 44 Comp. Gen. 271 (1964). In contrast, your bid was rejected since you indicated that the entire end item would be manufactured by a large business.

Furthermore, under applicable regulations, the contracting officer was required to accept H. N. Bailey's self-certification of being a small business and the manufacturer of the items to be furnished, unless he possessed information to the contrary, which is not indicated here. Armed Services Procurement Regulation 1-703(a)(2). Also, the regulations provide that a size protest will be considered timely only if it is submitted to the contracting officer within five working days after bid opening. Where such protest is not timely or is received after award, SBA is to be advised for the purpose of consideration in any future procurements.

Accordingly, your protest is denied.

Very truly yours,

R.F.KELLER

Deputy Comptroller General  
of the United States