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DECISION



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

[Protest Alleging That Proposed Awardee is Nonresponsible]

FILE: B-195350.2

DATE: February 4, 1980

MATTER OF: Microforms Management Corp. *DLG 03802*

DIGEST:

Where IFB requires bidder's production facility be within 500-mile radius of Jacksonville, Florida (definitive responsibility criterion), and low bidder is distance of 556 statute miles and 471 nautical miles, issuance of certificate of competency by SBA is conclusive on procuring activity and GAO, absent showing of willful disregard of facts to imply bad faith, a showing not made here.

Microforms Management Corp. (Microforms) has protested the proposed award of a contract to American Drafting & Laminating Company by the Naval Supply Center, Charleston, South Carolina, under invitation for bids No. N00612-79-B-0055. *DLG 0109* *AGC 06884*

The IFB invited bids for microfilm services for the Navy Printing & Publications Service Office, Jacksonville, Florida, and required that a bidder have its principal production facility within a 500-mile radius of Jacksonville, a definitive criterion of responsibility. The mileage limit has been determined by the Government to be necessary to assure liaison between the Government and the contractor and compliance with the 24-hour pickup and delivery requirement in the IFB.

Microforms argues that American does not comply with this requirement because American's production facility is located in Virginia Beach, Virginia, a distance of 556.2 statute miles from Jacksonville, Florida.

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The contracting office found American to be nonresponsible for failing to meet the mileage requirement, but, because of its small business status, referred the matter to the Small Business Administration (SBA) for consideration of issuing a certificate of competency (COC) to American. SBA reviewed the matter and issued American a COC as a responsible small business bidder.

As Microforms has noted in its brief on the protest, the issuance by SBA of a COC is normally conclusive on the procuring activity and our Office with regard to all aspects of a bidder's responsibility. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322, and Small Business Act, 15 U.S.C. § 637(b)(7) (1976 and Supp. I 1977). However, Microforms points to a caveat contained in Baranello that we will review SBA's determinations if there is a prima facie showing that such action was taken fraudulently or with such willful disregard of the facts as to imply bad faith. Microforms contends that since the distance between Jacksonville and Virginia Beach exceeds 500 miles, SBA must have disregarded the facts in deciding to issue the COC.

SBA has advised our Office that, upon review of certain Federal Aviation Administration publications, it ascertained that the distance between Virginia Beach and Jacksonville is 471 air or nautical miles and, since American plans to utilize an air express carrier to perform the contract, it found American responsible.

Microforms argues that the solicitation did not permit the use of nautical miles, but only referred to "a radius of 500 miles" and miles, in that context, is commonly understood to mean statute miles.

We do not find it necessary to resolve what the term "miles" means, either nautical or statute, in deciding the protest. We believe the rationale of Baranello controls the outcome.

In Baranello, the solicitation required a bidder to have prior experience in installing elevator banks of four or more elevators. The contracting officer found the low bidder nonresponsible because it had never

installed banks of more than two elevators. However, upon review, the SBA issued the firm a COC and affirmed its finding upon appeal by the contracting agency.

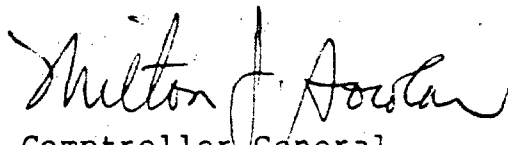
Following a recitation of SBA's statutory basis for its authority and prior precedents of our Office, we concluded the COC determination was conclusive on the contracting officer and GAO absent fraudulent action or a willful disregard of the facts such as to imply bad faith.

The decision also stated:

"* * * we are aware of no limitation on the SBA's authority which would bind that agency to the actual requirements of a Competency of Bidder's clause. Hence, in our opinion, notwithstanding the contracting officer's disagreement over SBA's application of the Competency of Bidders clause to the facts of this case, the issuance of the COC in this case must be viewed as conclusive. Consequently, contracting agencies cannot overcome SBA's statutory authority to make these responsibility determinations as regards to small business concerns by specifying the 'special standards' or 'definitive criteria' of responsibility in the invitation. * * *"

Here, SBA considered the definitive criterion (within 500 miles) and found American to be responsible. While SBA placed one interpretation on the requirement and the protester urges a different one, we cannot say that SBA willfully disregarded the facts as to imply its action was taken in bad faith.

The protest is denied.



For the Comptroller General
of the United States