

**DECISION**

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

**FILE:** B-215162

**DATE:** October 16, 1984

**MATTER OF:** Industrial Design Laboratories, Inc.

**DIGEST:**

1. The government is not required to eliminate any competitive advantage that a firm might have as a result of federal, state or local programs unless the advantage is the result of unfair government action.
2. Bids must adequately establish who the true bidding entities are to insure that bids are not submitted through irresponsible parties whose principals then could avoid or support the bids as their interests might dictate.
3. Protest's strong disagreement with contracting officer's finding that the low bidder, which allegedly has no tooling or pertinent experience, is responsible, is insufficient to show that contracting officer acted fraudulently or in bad faith.
4. A bidder's failure to complete the contingent-fee and affiliation certifications in the Standard Form 33 is a minor informality that can be waived since completion of these certifications is not necessary to determine the responsiveness of a bid.

Industrial Design Laboratories, Inc. (IDL) protests any award to the Confederated Salish and Kootenai Tribes, S&K Electronics under invitation for bids (IFB) No. DAAA09-84-B-0198, issued by the Department of the Army for

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electric heaters for various armored combat vehicles. IDL first contends that S&K had an unfair competitive advantage because its land, building and equipment allegedly were secured through government grants and its labor is subsidized by the government. IDL next contends that while there is a federally chartered corporation named "The Confederated Salish and Kootenai Tribes of the Flathead Reservation" (the Tribes), there is no such entity as "Confederated Salish and Kootenai Tribes, S&K Electronics," the name in which the bid was submitted, and therefore no award can be made based on the bid. Third, IDL contends that because S&K allegedly has no tooling, pertinent manufacturing experience or facilities, other than an empty building, finding S&K responsible was so grossly erroneous as to constitute constructive fraud. Finally, IDL argues that S&K was nonresponsive because of its failure to complete the contingent-fee and affiliation certifications in the IFB.

We deny the protest.

Even if S&K has somehow been "subsidized," in terms of facilities or personnel costs, because of its apparent affiliation with the Tribes, the government is not required to eliminate any competitive advantages that certain firms might have as a result of federal, state or local programs unless the advantage is the result of unfair action by the government. See Planning and Analysis, Inc., B-213941, Apr. 20, 1984, 84-1 CPD ¶ 451. There is no suggestion of unfair government action here, and since the procurement was unrestricted, we know of no legal reason why S&K could not compete with IDL and other commercial firms.

With respect to the identity of the bidder, our concern is whether the bid reflects a binding commitment by the true bidding entity so that the entity would not be able to avoid an award if it chose to do so merely on the argument that it was not in fact the named bidder. See Protectors, Inc., B-194446, Aug. 17, 1979, 79-2 CPD ¶ 128. Otherwise, bids could be submitted through irresponsible parties whose principals then could avoid or support the bids as their interests might dictate. See 33 Comp. Gen. 549 (1954). Thus, for example, in Martin Company, B-178540, May 8, 1974, 74-1 CPD ¶ 234, which IDL cites,

we held that an award to a sole proprietorship would be improper because the bidding entity certified itself as an Oklahoma corporation whereas in fact no such corporation existed.

The record here shows that the Confederated Salish and Kootenai Tribes of the Flathead Reservation is chartered by the federal government and empowered to engage in any business to further the economic well being of the tribal members. The Tribes authorized the formation of S&K on September 18, 1983, allocated start-up funds to S&K on October 18, hired a manager on November 14 and on March 9, 1984 directed the development of a corporate charter for S&K to be approved by the Tribal Council. The bid was submitted in the name of the "Confederated Salish and Kootenai Tribes, S&K Electronics"<sup>1/</sup> and it specifically stated that S&K was a wholly owned tribal enterprise. The bid listed an employer identification number which belonged to the Tribes. Although there is no indication that S&K has been incorporated, it has a board of directors appointed by the Tribes, and has been awarded another contract by the Army.

The record thus clearly shows that S&K is part of and subject to the direction of the Tribes and that unless and until S&K is incorporated as a separate entity, the Tribes are responsible for S&K's contractual and financial obligations. In our view, the current status of S&K is similar to that of separate corporate divisions or groups which have their own names but no legal identities apart from the corporations of which they are elements. Often the names of such divisions or groups are included over or under the names of the corporate bidders to identify which parts of the corporations will actually perform the contract.

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<sup>1/</sup> Actually, the words "S&K Electronics" were printed directly beneath the words "The Confederate Salish and Kootenai Tribes" both on the bid form and on the bidder's stationery.

Accordingly, we think the identity of the bidder here is clear, and that there is no reasonable basis to be concerned that the bidding entity retained an option to avoid acceptance of its bid. See Oscar Holmes & Son, Inc., et al., B-184099, Oct. 24, 1975, 75-2 CPD ¶ 251.

IDL's contention that because S&K allegedly has no tooling or pertinent experience and occupies an empty building, the pre-award survey approving award to S&K is so tainted as to constitute constructive fraud, is a challenge to the contracting officer's affirmative determination of S&K's responsibility. Because such determinations depend largely upon subjective business judgments, our Office does not review them unless the solicitation contains definitive responsibility criteria which allegedly have been misapplied or it is shown that the procuring officials acted in bad faith or fraudulently. See B&H Aircraft Company, Inc., B-210798, Apr. 1, 1983, 83-1 CPD ¶ 344.

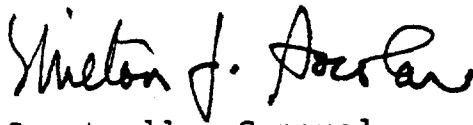
The solicitation here contained no definitive responsibility criteria, and the mere fact that IDL disagrees strongly with the contracting officer's determination of responsibility does not show that the contracting officer acted fraudulently or in bad faith. See J.F. Barton Contracting Co., B-210663, Feb. 22, 1983, 83-1 CPD ¶ 177. The record clearly shows that the determination of responsibility was reasonable and based on a recommendation of a pre-award survey teams consisting of eight government specialists that visited S&K. The team confirmed that S&K was established and owned by the Tribes and found that although S&K was new, it had done a thorough job of planning and was technically capable of performing the contract. It also found that S&K had adequate financing and management, and a new building, and that with its financial and labor resources, it could obtain whatever additional labor and equipment it might need without progress payments from the government.

We also find no merit in IDL's contention that S&K's bid was nonresponsive because the required contingent-fee and affiliation certifications were not completed. We have frequently held that these certifications, which are found

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in the Standard Form 33, are not necessary to determine whether a bid meets the specifications and, therefore, the failure to complete them does not affect the responsiveness of a bid. See Extinguisher Service, Inc., B-214354, June 14, 1984, 84-1 CPD ¶ 629; K.P.B. Industrial Products, Inc., B-210445, May 24, 1983, 83-1 CPD ¶ 561. Therefore, such deficiencies may be waived as minor informalities. LePrix Electrical Distributors, Ltd., B-212340.3, Oct. 28, 1983, 83-2 CPD ¶ 513.

The protest is denied.

*for*   
Comptroller General  
of the United States