

**DECISION**

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

*Has further  
PL-T  
31557*

**FILE:** B-217593 **DATE:** June 26, 1985  
**MATTER OF:** Siska Construction Company, Inc.

**DIGEST:**

1. Protest against small business size status of bidders is by law matter for consideration by SBA and will therefore not be considered by GAO.
2. Questions concerning propriety of standard industrial classification utilized for small business set-aside procurement is not for consideration by GAO, since conclusive authority over question of this nature is vested in SBA.
3. Bid containing "no charge" instead of prices for some items is responsive since bidder thereby indicated willingness to provide items at no charge or cost to government.
4. Mere allegation is not sufficient to meet protester's burden of establishing its case.

Siska Construction Company, Inc. (Siska), protests an award to any bidder other than itself under United States Coast Guard (First Coast Guard District) invitation for bids No. DTCG24-85-B-10023, a 100-percent small business set-aside for a marine boat hoist.

We deny the protest.

Siska contends, first, that the three other lower-priced bidders, notwithstanding the small business representations in their bids, are not small businesses for this procurement inasmuch as they are "dominant" in the field of marine boat manufacture. Second, Siska contends that standard industrial classification (SIC) 3731 (shipbuilding and repairing) identified in the invitation,

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under which the other bidders qualified as small businesses on the basis of the number of employees, was incorrect and should have been SIC 3536 (hoists, industrial cranes, and monorail systems). Third, Siska maintains that since award was to be made in the aggregate, the low bidder submitted a nonresponsive bid by bidding "No Charge" rather than a price on item Nos. 2 (labor, materials, and tools for the hoist erection) and 3 (instruction on use and maintenance of the hoist). Fourth, Siska contends that the low bidder created an unfair bidding situation for Siska since Siska allegedly received a quote for supplying a hoist from the low bidder and the protester was bidding as a prime contractor with the low bidder as its principal subcontractor.

Our Office does not review the first two protest bases. The Small Business Administration (SBA) has exclusive authority under 15 U.S.C. § 637(b) (1982) to determine matters of small business size status for federal procurement purposes. Extinguisher Service, Inc., B-214354, June 14, 1984, 84-1 CPD ¶ 629. Further, under SBA regulations, the initial determination of the appropriate classification of products or services being procured shall be made by the contracting officer with the right of appeal to the SBA Office of Hearings and Appeals. 13 C.F.R. § 121.3-6 (1984); Tecom Inc., B-217058, Dec. 5, 1984, 84-2 CPD ¶ 630. The determination of the SBA is conclusive on the matter. Graphics Industries Association, B-212963, Sept. 20, 1983, 83-2 CPD ¶ 352.

Siska's third contention is without merit. When the government is to make an aggregate award, to be responsive, a bidder must price all items and thereby indicate an intention to furnish all items. However, a bidder may also indicate an intent to be obligated to provide an item by inserting next to the items an indication that the price will be at "No Cost" or "No Charge" to the government. When this is done the bid is responsive. Aardvark/Keith Moving Co., B-200680, Mar. 6, 1981, 81-1 CPD ¶ 180.

As to the final basis of the protest, the low bidder advises that when it learned that Siska wanted a quote on its marine boat hoist for the purpose of this procurement, it informed Siska that it intended to bid on the procurement and could not deal with Siska for this procurement. In any event, Siska has not explained its assertion of unfairness or offered any proof to

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substantiate its allegation. Siska therefore has not sustained the burden of establishing this aspect of its case. Wallace & Wallace, Inc., et al., B-209859, et al., Dec. 2, 1982, 82-2 CPD ¶ 501.

The protest is denied.

*for Seymour Efron*  
Harry K. Van Cleve  
General Counsel