



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kettenburg Marine Corporation

File: B-230628

Date: March 23, 1988

DIGEST

A small business, to be eligible for award of a contract that is set aside for small business, must perform at least 50 percent of the cost of the contract with its own employees if a contract for services (except construction) is involved or must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials, if a supply contract is to be awarded.

DECISION

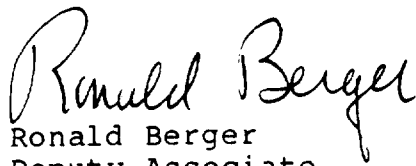
Kettenburg Marine Corporation protests the award of a contract to any firm other than itself under invitation for bids (IFB) No. N62791-88-B-0031, issued by the Supervisor of Shipbuilding, Conversion and Repair, United States Navy, U.S. Naval Station, San Diego. The basis for Kettenburg's protest is the contracting officer's determination that Kettenburg is not a responsible bidder and the Small Business Administration's (SBA's) subsequent refusal to issue a certificate of competency (COC).

Kettenburg states that the nonresponsibility determination and the SBA's refusal to issue a COC are both erroneous because they are based exclusively on the rationale that Kettenburg would not be performing more than 50 percent of the work under the referenced solicitation. It is Kettenburg's belief that so long as the successful bidder performs substantial work under the contract itself, subcontracting of work pursuant to the solicitation, even when this subcontracting amounts to more than 50 percent of the total work to be performed, is not a ground for SBA to refuse to issue a COC nor for the contracting officer to determine a bidder nonresponsible.

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Recent amendments to the Small Business Act that became effective October 1, 1987, require that for a contract for services (except construction), the contractor will perform at least 50 percent of the cost of the contract with its own employees, while for a supply contract the firm must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the costs of materials. Pub. L. No. 99-591, § 921, 100 Stat. 3341-147 (1986). Accordingly, since Kettenburg planned to subcontract more than 50 percent of the work, the actions of the Navy and the SBA here are not legally objectionable.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel