



Comptroller General
of the United States
Washington, D.C. 20548

K4176

Decision

Matter of: KB Industries--Reconsideration

File: B-244120.2

Date: June 14, 1991

Kenneth W. Bray for the protester.
Russell P. Spindler, Esq., Department of the Navy, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Company may not change an offer submitted in its own name after the closing date to make itself only the agent of another company since award to an entity other than that named in the original offer is improper and inconsistent with the competitive system.

DECISION

KB Industries requests reconsideration of our dismissal of its protest against the award of a contract under request for quotations (RFQ) No. N60580-91-R-0128, issued by the Department of the Navy for a quantity of calcification prevention tablets.

We deny the request for reconsideration.

KB Industries, a small business concern identifying itself as both a regular dealer and a manufacturer of the item, submitted the apparent low offer. In the course of the preaward survey, however, the contracting officer determined that KB Industries did not qualify for award as either a regular dealer or a manufacturer under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1988). This decision was affirmed by the Small Business Administration (SBA). KB Industries then filed a protest with our Office.

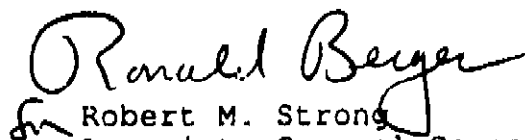
By notice of May 23, 1991, we dismissed the protest because under our Bid Protest Regulations, our Office does not consider the legal status of a firm as a regular dealer or a manufacturer under the Walsh-Healey Act. 4 C.F.R. § 21.3(m)(9) (1991). By law this matter is decided by the

contracting agency in the first instance, subject to review by the SBA, where a small business is involved, and the Secretary of Labor. The Pratt & Whitney Co.; Onsrud Mach. Corp., B-232190; B-232190.2, Dec. 13, 1988, 88-2 CPD ¶ 588.

On reconsideration, KB Industries asserts that in its initial protest it was not challenging the determination of its legal status under the Walsh-Healey Act, but the agency's failure to allow it an opportunity to change its status from that of a regular dealer or a manufacturer to that of an agent for Stellar Manufacturing Co., the firm that actually would manufacture the item.

To the extent the original protest can be read in this way, our disposition--dismissal--would not have changed. Essentially, what KB Industries seeks is the opportunity to submit a new offer, substituting Stellar for itself as the offeror and the manufacturer of the item. However, an award to an entity other than that named in the original offer is improper; substitution of one firm for another that has submitted an offer is not allowed because of the need to avoid offers from irresponsible parties whose offers could be avoided or ratified by the real principals as their interests might dictate. See generally Haz-Tad, Inc., et al., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486; Griffin Constr. Co., 55 Comp. Gen. 1254 (1976), 76-2 CPD ¶ 26. Thus, allowing KB Industries to make such a change would result in an improper substitution of firms. In short, once KB Industries submitted an offer in its own name, it could not change the offer after the closing date to substitute another entity as the real party in interest.

The request for reconsideration is denied.


for Robert M. Strong
Associate General Counsel