

DOCUMENT RESUME

02987 - [A2013096]

[Contractor Size and Eligibility]. B-189450. July 14, 1977. 2 pp.

Decision re: M. C. & D. Capital Corp.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Marine Corps: Logistics Support Base, CA; Robert F. Smith Co.

Authority: Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). 15 U.S.C. 627(B)(6). 40 U.S.C. 330(d). B-187243 (1976). B-187555 (1976). 29 C.F.R. 5.6(h)(1).

The protester objected to the award of a contract on the bases that the contractor selected was not a small business firm, was affiliated with firms which have been debarred, and was therefore ineligible for the award. A Small Business Administration decision that a firm is a small business is conclusive and not subject to GAO review. The determination as to whether a contractor is ineligible for an award because it is affiliated with a debarred firm is a matter for consideration by the contracting agency and the Secretary of Labor. (Author/SC)

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*Feldman*  
*P.S. #*

**DECISION**



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

FILE: B-189450

DATE: July 14, 1977

MATTER OF: M. C. & D. Capital Corporation

**DIGEST:**

1. SBA decision that concern is a small business is conclusive and not subject to review by GAO.
2. Protest that contractor is affiliated with debarred firm and ineligible for award is not for consideration by GAO under Contract Work Hours and Safety Standards Act because such determinations are for contracting agency and Secretary of Labor.

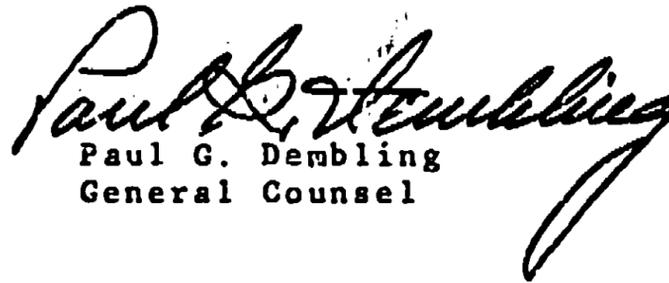
M. C. & D. Capital Corporation (Capital) protests the award of a roofing contract to Robert F. Smith Co. (Smith) under solicitation No. N62474-77-B-7082, by the Marine Corps Logistics Support Base, California. Capital's bases for protest are that (1) Smith is not a small business concern (by reason of its affiliation with a large business) as required by the solicitation and (2) Smith is affiliated with firms which have been debarred for violations of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 327 et seq. (1970), and was therefore ineligible for award.

On June 22, 1977, the Small Business Administration (SBA) San Francisco, California, Regional Office determined that Smith was a small business for this procurement and Capital has appealed that determination to the SBA Size Appeals Board. Under 15 U.S.C. § 627(B)(6) (1970), the SBA is empowered to determine conclusively the size status of a business concern. Its determinations, therefore, are not subject to review by our Office. La Crosse Garment Manufacturing Company, B-187243, September 2, 1976, 76-2 CPD 216.

B-189450

Capital's allegation that Smith is affiliated with debarred firms and ineligible for award, also, is not a matter for consideration by our Office because the Department of Labor is empowered to prescribe standards, regulations and procedures to govern enforcement of the Act. 40 U.S.C. § 330(d) (1970). The Federal agency head and the Secretary of Labor have primary responsibilities under the Act; this includes determinations regarding affiliations with debarred firms. 29 C.F.R. § 5.6(b)(i) (1976). Cf. Integrity Management International, Inc., B-187555, December 21, 1976, 76-2 CPD 515. The role of this Office in listing debarred firms is purely ministerial.

Accordingly, Capital's protest is dismissed.

  
Paul G. Dembling  
General Counsel