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DECISION

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

R. F. ...
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FILE: B-189587

DATE: October 14, 1977

MATTER OF: Multi Electric Mfg. Inc.

DIGEST:

Protest by small business against contracting officer's determination of nonresponsibility because of lack of tenacity and perseverance is dismissed since, pursuant to recent amendment of Small Business Act, Pub. L. 95-89, § 501, 91 Stat. 553, matter has been referred for final disposition by Small Business Administration.

Multi Electric Mfg. Inc. (Multi Electric) protests a determination by the Federal Aviation Administration (FAA) that the firm lacks tenacity and perseverance and therefore is non-responsible for purposes of Solicitation No. LGM-7-7280B2.

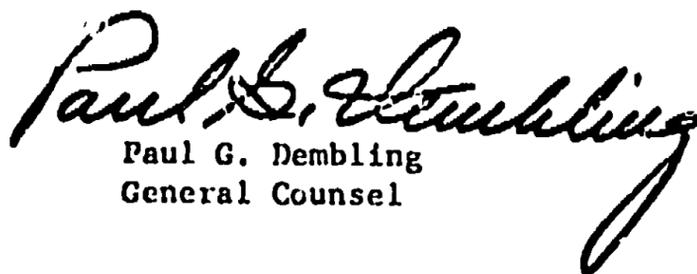
The solicitation provides for 20 each Flasher Light Systems and ancillary items and was issued to 30 prospective small business firms as the reprourement for identical equipment to be delivered under FAA Contract No. DOT-FA76WA-3796 held by Multi Electric. This contract was terminated for default because of Multi Electric's failure to deliver the supplies within the time required.

Since Multi Electric's bid on the reprourement was lower than its price under the terminated contract, the bid should be considered for award if the firm is determined to be responsible. PRB Uniforms Inc., B-187723, September 22, 1977, 56 Comp. Gen. ____, 77-2 CPD ____. Following opening of bids, the contracting officer determined that the low responsive bidder, Multi Electric, was not a responsible firm in that the firm was lacking in tenacity and perseverance due to its failure to furnish these same supplies under the terminated contract. The determination of nonresponsibility, with supporting information, was forwarded to the Small Business Administration (SBA). SBA subsequently indicated its intent to appeal the determination pursuant to Federal Procurement Regulations § 1-1.708-2(a)(5), which permits SBA to register any contrary views prior to resolution of the issue by the head of the procuring activity.

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However, prior to final resolution of this matter the Small Business Act was amended to authorize SBA to conclusively determine all elements of responsibility, including the tenacity and perseverance of any small business concern to perform a Government contract. Pub. L. 95-89, Section 501, 91 Stat. 561, approved August 4, 1977.

We have been advised by FAA that in view of the recent amendment of the Small Business Act it is processing a request for a determination of responsibility for final decision by SBA. In view of the statutory authority vested in SBA to conclusively determine such issues, this Office must decline from further consideration of the protest and the matter is dismissed.


Paul G. Dembling
General Counsel