

PL-1
Protest

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DECISION



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

FILE: B-198215

DATE: April 28, 1980

MATTER OF: Dynation Corporation

DIGEST:

1. Protest by small business bidder is dismissed where contracting officer determined protester to be nonresponsible and has referred matter to Small Business Administration (SBA) because SBA, not GAO, has statutory authority to conclusively determine responsibility of small business bidders.
2. Protest against firm's small business size status and ability to deliver acceptable product is academic in view of protested firm's refusal to extend bid acceptance period.

Dynation Corporation (Dynation), a small business concern, [protests against the possible award of a contract to American Lock Company (American), the only other bidder under invitation for bids (IFB) No. DLA 500-79-B-2537 issued by the Defense Logistics Agency (DLA). Dynation asserts that American has a history of delinquent deliveries on prior contracts for padlocks, that its padlock has not been tested or approved and cannot pass the tests required by the IFB specifications, and that American does not qualify as a small business concern for the purposes of the procurement.]

Because DLA has informally advised our Office that American declined to extend the acceptance period of its bid and that the contracting officer has determined Dynation to be nonresponsible and has referred the matter to the Small Business Administration (SBA), pursuant to Defense Acquisition Regulation § 1-705.4(c) (Defense Acquisition Circular No. 76-19, July 27, 1979), the protest is dismissed.

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SBA is authorized under its Certificate of Competency (COC) program to make the final determination as to whether a small business bidder is responsible. 15 U.S.C. § 637(b)(7) (1976 & Supp. I 1977). Therefore, the protest is inappropriate for our consideration on the merits. Medical Services of America, Inc., B-197579, April 4, 1980, 80-1 CPD ____; United Security, Inc., B-194868, B-194870, June 21, 1979, 79-1 CPD 446; Ikard Manufacturing Co., B-190450, October 28, 1977, 77-2 CPD 332.

American's refusal to extend its bid acceptance period renders Dynation's contentions concerning the firm's small business size status and ability to deliver an acceptable product academic and we will not consider them further. See Risi Industries, et al., B-191024, April 27, 1978, 78-1 CPD 329; J. Baranello and Sons, 58 Comp. Gen. 509, 516 (1979), 79-1 CPD 322.

Henry D. Van Cleave
for Milton J. Socolar
General Counsel