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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

[Protest of ~~Nonresponsibility~~ Determination 17403

FILE: B-200151

DATE: March 18, 1981

MATTER OF: Aero Turbine

DIGEST:

2606330

1. Information received by protester that agency intends to make award notwithstanding protester's challenge to preaward survey and request for reconsideration thereof, constitutes notice of bases of protest for purpose of determining timeliness and failure to file protest within 10 days following receipt of information renders protest untimely.
2. Protest that negative preaward survey was improper relates to protester's ability to perform contract and thus necessarily brings into question protester's eligibility for COC, matter for conclusive determination by SBA which will not be reviewed by GAO absent prima facie showing of fraud or disregard for facts by SBA.
3. Where Government requirement was urgent and there were only two qualified sources, one of which had recently been found non-responsible under contract for same item and was then found ineligible for COC, agency acted reasonably in awarding contract to other source instead of risking consequence of delayed delivery of items by taking time to perform new preaward survey.

Aero Turbine protests the contracting officer's determination that it was not responsible under purchase requests 80-27155 and 80-27395 issued by the Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma. Aero further protests that it was improperly excluded from offering on purchase request 80-30619. All three purchase requests were for delivery of quantities of shroud rings. The

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first two solicitations were issued to Aero and Associated Aerospace Activities, the only two qualified sources. Associated was the only source considered for the quantity represented by the third purchase request.

Aero was the low offeror on the first two solicitations but was rejected as nonresponsible pursuant to unsatisfactory preaward survey ratings as to financial capability, purchasing and subcontracting, and ability to meet the delivery schedule. The matter was referred to the Small Business Administration (SBA) which refused to issue a certificate of competency (COC) based on its finding that Aero would perform an insufficient percentage of the work with its own facilities, thereby rendering Aero ineligible for the award under SBA regulations. 13 C.F.R. 125.5(f)(1980). By letter of July 8, 1980, Aero furnished the Air Force with information purporting to show that it could perform the contracts and requested a new preaward survey. No action was taken, however, and an award to Associated, the only other offeror, was made on July 18. Purchase request 80-30619, issued on June 27 for an additional quantity of shroud rings, was included in the award since the Air Force deemed it an urgent requirement and Aero had just received a negative preaward survey for the same item.

The protester contends initially that the Air Force's preaward survey was erroneous in numerous respects and that the contracting officer should have requested a new preaward survey based on the information it submitted on July 8. These questions are not for consideration by our Office. The aspect of Aero's protest alleging improprieties in the agency's preaward survey relates to Aero's ability to perform the contract and thus, necessarily brings into question Aero's eligibility for a COC. It is well-settled that the SBA is vested with conclusive authority to determine all elements of the responsibility of a small business concern under the COC procedure. 15 U.S.C. § 637(b)(7) (Supp. I, 1977). Our Office generally will not review these determinations regarding COC eligibility absent a prima facie showing of fraud or disregard of the facts on the SBA's part. Allied Carpetmaster, Inc., B-198665, August 13, 1980, 80-2 CPD 115. Neither of these elements has been

established by Aero and thus, our Office will not review this allegation. See Hacking Labs, B-197777, April 21, 1980, 80-1 CPD 280. Accordingly, the protest is dismissed as to this issue.

Furthermore, both this allegation and Aero's contention that the contracting officer improperly refused to request a new preaward survey are untimely. Our Bid Protest Procedures require that protests be filed in our Office "not later than 10 days after the basis for protest is known or should have been known." 4 C.F.R. § 20.2(b)(2) (1980). As already noted, on July 8, following the SBA's denial of a COC, Aero questioned the Air Force's non-responsibility determination and requested that the Air Force reconsider its preaward survey. Although the precise date is not provided, the chronology detailed by Aero indicates that, sometime between July 8 and the July 18 award, the contracting officer informed Aero that it intended to make an award to Associated notwithstanding Aero's request for reconsideration. Receipt of this information constituted notice to Aero, and thus, the portion of its protest challenging the preaward survey and the denial of a reconsideration of the preaward survey should have been filed within 10 days following receipt of the information. Since Aero's protest was not received until August 28, these allegations are untimely. See generally Optic Electronic Corporation, B-199404, July 18, 1980, 80-2 CPD 48.

Aero also contends that the Air Force should have allowed that firm to bid on the June 29 requirement instead of making what amounted to a sole-source award to Associated. We have recognized, however, that there are certain circumstances under which sole-source procurements may be justified. One such circumstance is where time is of the essence and only one known source can meet the Government's needs within the required timeframe. Las Vegas Communications, Inc., B-195966, July 22, 1980, 80-2 CPD 57. We will question such an award only where it is shown that the contracting officer acted without a reasonable basis. North Electric Company, B-182248, March 12, 1975, 75-1 CPD 150. In this regard, our Office is concerned with whether the award is supportable and not with whether it was properly supported. Tosco Corporation, B-187776, May 10, 1977, 77-1 CPD 329.

Here, the Air Force's determination to negotiate stated that the requirement represented by all three purchase requests should be negotiated since the delays attending formal advertising procedures would result in the delivery schedule for this urgent request being exceeded. This in turn could result in "line stoppages and attendant financial damage to the Government." No mention was made of a sole-source award. Aero and Associated were the only two qualified sources, however, and Aero had been found ineligible for award under the first two purchase requests due to insufficient capitalization and inability to meet the delivery schedule. The SBA then declined to issue a COC on the ground that Aero would contract out an excessive percentage of the work. In consideration of these findings and the urgency of the requirements, the Air Force combined the third purchase request with the first two and issued it to Associated on a sole-source basis rather than risk the consequences of delayed delivery of the items by taking the time to conduct a new preaward survey of Aero. Aero disputed the conclusions of the preaward survey, but we do not think that fact alone renders the contracting officer's reliance on those conclusions unreasonable. Indeed, despite the fact that the agency's formal determination does not mention Associated was the sole source, we believe the record supports the Air Force's position that only Associated, the only other qualified supplier, could at that time have met its urgent need. Consequently, we find that award of this portion of the procurement on a noncompetitive basis was unobjectionable. See Singer Company, Inc., Kearfott Division, 58 Comp. Gen. 575 (1979), 79-1 CPD 395.

The protest is dismissed in part and denied in part.

Milton J. Fowler

Acting Comptroller General
of the United States