

DECISION



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

FILE: B-207537

DATE: July 6, 1982

MATTER OF: Space Age Engineering, Inc.

DIGEST:

GAO will not review determination of nonresponsibility of small business bidder absent prima facie showing of fraud or that information vital to responsibility determination was willfully disregarded, thus implying bad faith, where such determination was referred to and concurred in by Small Business Administration (SBA) since disposition by SBA with regard to such matters is final.

Space Age Engineering, Inc. (Space Age), protests the rejection of its low acceptable bid for firefighting service under Naval Facilities Engineering Command invitation for bids No. N62472-81-B-0321 issued to compare costs against performance by Government personnel under Office of Management and Budget (OMB) Circular A-76.

The contracting agency determined that Space Age was nonresponsible based on a negative preaward survey, citing unsatisfactory technical capability, labor resources, and ability to meet the schedule. Because Space Age is a small business concern, the matter was forwarded to the Small Business Administration (SBA) for the possible issuance of a certificate of competency (COC). The SBA declined to issue a COC and the bid was rejected.

Space Age contends that no valid reason exists for a COC denial. Space Age asserts that an SBA representative told it that he voted against the issuance of a COC because of advice from the firefighters union at the contracting agency that its members would not accept employment under any contract awarded to Space Age. Accordingly, Space Age

maintains the COC denial was improperly based on illegal evidence because the union action constituted illegal union activity (a secondary boycott) under the National Labor Relations Act, was contrary to OMB Circular A-76 containing Federal policy to contract work to commercial industry where cost effective and violated the law that bars Federal employees from striking or exerting economic influence against the Government. Space Age also contends that the SBA denial of a COC is not binding on our Office where, as allegedly here, the denial is not based upon substantial evidence or where new evidence exists.

When a contracting agency determines that a small business bidder is nonresponsible, the law requires that the matter be referred to the SBA, which conclusively determines the bidder's responsibility by issuing or declining to issue a COC. 15 U.S.C. § 637(b)(7) (1976 and Supp. I, 1977). Our Office has no authority to review determinations by the SBA, to require issuance of a COC, or to reopen a case where a COC has been denied unless the protester has made a prima facie showing of fraud or that information vital to the responsibility determination was willfully disregarded, thus implying bad faith. Ken Com, Inc., 59 Comp. Gen. 417 (1980), 80-1 CPD 294; Dan's Janitorial Service & Supply, B-200360, January 22, 1981, 81-1 CPD 36.

Nothing in the Space Age protest shows that the protest comes under any of the above exceptions. The SBA COC denial document indicates that SBA did not rely on the alleged proscribed union activities as a basis for its determination. Rather, the document reveals that the COC denial was based upon the belief that Space Age did not fully understand the solicitation requirements and would be able to meet those requirements only with "significant losses." SBA concluded that the Space Age "production plan for the fire suppression portion of the contract [underestimating the necessary manning levels] will not support the scope of work required under the solicitation," that Space Age intended to man two positions with one employee contrary to the solicitation requirements, that the resumes/applications submitted by Space Age for firefighter positions did not meet the qualification standards set forth in the solicitation, and that

the Space Age estimates of training costs and overtime pay were unreasonable.

Protest dismissed.

Harry R. Van Cleve
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Acting General Counsel