

DECISION

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

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FILE: B-212653

DATE: November 30, 1983

MATTER OF: Surgical Instrument Company of America

DIGEST:

1. GAO will not review protest concerning determination by Small Business Administration to issue a certificate of competency except upon a prima facie showing of fraud on the part of government officials or where protest concerns a small business' compliance with definitive responsibility criterion contained in solicitation.
2. Whether a bidder is a regular dealer or a manufacturer under the Walsh-Healey Act is for determination by the contracting agency subject to final review by the Small Business Administration and the Department of Labor and, thus, will not be considered by GAO.
3. GAO will not review an allegation that an agency is improperly withholding information from the protester. The protester's sole recourse is to pursue the disclosure remedies provided by the Freedom of Information Act.

Surgical Instrument Company of America (SICOA) protests the award of a requirements contract to Trimed, Inc. under request for proposals (RFP) No. YGA-Z-TC-222-N(2)-2-15-83 issued by the General Services Administration (GSA) for surgical instruments and medical kits. We dismiss the protest because none of the issues raised are appropriate for our review.

SICOA contends, based on its analysis of Trimed's offered prices, that Trimed must be purchasing supplies from foreign sources and has falsely certified to GSA that domestic source end products will be furnished. In this connection, SICOA alleges that GSA negligently failed to conduct a proper preaward survey to investigate Trimed's certification despite repeated warnings from SICOA of

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fraudulent practices by other contractors which have previously supplied these items. SICOA also questions the overall capability of Trimed to satisfactorily perform the contract work. In response, GSA states that a thorough preaward survey was conducted by a quality assurance specialist who, while not recommending award to Trimed for other reasons, found Trimed in compliance with all domestic source requirements. GSA then determined Trimed to be nonresponsible. However, GSA reports that the Small Business Administration (SBA), which SICOA alleges was not properly warned by GSA of the domestic source certification problem, subsequently issued Trimed a certificate of competency (COC) on June 14, 1983 and award was made to that firm on June 15, 1983.

The determination of whether a proposed awardee will comply with a domestic source certificate is a matter of responsibility. See Gillette Industries, Inc., B-192175, July 7, 1978, 78-2 CPD 24. Here, prior to the filing of SICOA's protest with our Office, the SBA, pursuant to its statutory authority, 15 U.S.C. § 637 (b)(7) (1982), determined Trimed to be responsible by issuing a COC to that firm. Therefore, any consideration of SICOA's protest concerning Trimed's responsibility would necessarily involve a review by our Office of SBA's COC determination.

However, our Office generally does not review SBA's COC determinations because the law provides that SBA's determinations are conclusive. Id. Thus, we will consider protests by third parties concerning SBA's issuance of a COC only upon a prima facie showing of fraud on the part of government officials or where a solicitation contains a definitive responsibility criterion and the issue raised involves a small business firm's compliance with that criterion. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322; U.S. Eagle, Inc.; Reliable Building Maintenance Company, B-193773, August 2, 1979, 79-2 CPD 73; Uniflite, Inc., B-197365, January 23, 1980, 80-1 CPD 67. In the latter situation, our role is limited to suggesting that the SBA reconsider its decision if the record indicates that SBA did not consider vital information bearing on the small business bidder's compliance with the definitive criterion. Here, since fraud has not been alleged and compliance with a definitive responsibility criterion is not in issue, we will not consider the matter. Moreover, whether the contractor in fact complies with its domestic source certificate is a matter of contract administration, which is the responsibility of the procuring activity, and not this Office. Thorsen Tool Company, B-188271, March 1, 1977, 77-1 CPD 154.

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SICOA also contends that Trimed is neither a regular dealer nor a manufacturer as defined in the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976), and, therefore, is ineligible for award of a contract.

This is also an issue that we will not consider since such matters are by law for the contracting agency's determination, subject to final review by the SBA, where the offeror is a small business, and the Department of Labor. Aviation Enterprises, Inc., B-205522, December 1, 1981, 81-2 CPD 439.

Finally, SICOA contends that GSA failed to disclose to it a letter of Trimed which contains a breakdown of its component sources and their places of manufacture. However, if SICOA desires such information, it may request it under the Freedom of Information Act (FOIA). Our Office has no authority under FOIA to determine what information government agencies must disclose. Westec Services, Inc., B-204871, March 19, 1982, 82-1 CPD 257. Thus, SICOA's sole recourse is to pursue the remedies provided for under FOIA. Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel