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**DECISION**



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

**FILE:** B-218578; B-218579      **DATE:** July 15, 1985  
**MATTER OF:** Ion Exchange Products, Inc.

**DIGEST:**

1. A contracting officer's negative finding of a small business concern's responsibility and subsequent transfer of the matter to the Small Business Administration (SBA) for final determination will not be reviewed by GAO when the small business fails to submit to SBA the information necessary for issuance of a certificate of competency as proof of its responsibility.
2. Sole-source negotiated procurement was justified where the agency's need for the procured items was urgent, the protester only recently had been found nonresponsible under a procurement for identical items and had failed to complete a certificate of competency application, and the contracting officer reasonably determined that there was, therefore, only one qualified source.

Ion Exchange Products, Inc. (Ion), protests the contracting officer's determination that the company was nonresponsible and, therefore, ineligible for award of a contract under invitation for bids (IFB) No. DLA700-84-B-1157 (IFB-1157) and for consideration in the negotiation of contract No. DLA700-85-C-1279 (DLA-1279), awarded on a sole-source basis. Both procurements were issued by the Defense Logistics Agency (DLA) to supply desalter kits used by the Army, Navy, and Air Force.

We deny Ion's protest.

IFB-1157

The IFB was issued as a total small business set-aside for the production of 2,548 desalter kits and required first article testing and approval by the government of six kits. The IFB advised that if the government did not waive the

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testing requirement for a bidder, the sum of \$9,600 would be added to the bid as the estimated cost to the government of performing first article testing.

Bids opened on October 12, 1984, revealed two bidders, Ion and Van Ben Industries, Inc. (Van Ben), with Ion evaluated as the low bidder. The contracting officer found Ion nonresponsible, however, based on a negative preaward survey and Ion's failure to pass the first article tests for the identical desalter kits under two previous government contracts. Because of Ion's small business status, the contracting officer referred the matter to the regional office of the Small Business Administration (SBA) for review under SBA's certificate of competency (COC) procedures. Although the record shows Ion initially intended to complete the COC application, the company failed to do so, claiming the regulatory 15-day period for filing and review by SBA was insufficient time. The SBA therefore did not issue a COC and closed its file on Ion. Ion's bid subsequently was rejected on the basis that Ion was nonresponsible, and a contract was awarded to Van Ben.

Ion contends that the contracting officer abused his discretion in making the initial nonresponsibility determination. Ion argues that the preaward survey that found Ion unsatisfactory in the area of financial capability was based on inaccurate and incomplete information. The protester further alleges that its inability to pass first article testing on the previous government contracts was the result of both defective specifications and improper testing by the government.

Our Office will not review a contracting officer's finding that a small business is nonresponsible, since SBA has conclusive authority under 15 U.S.C. § 637(b)(7) (1982) to determine the responsibility of small business concerns under its COC procedures. See Grantex Industries, Inc.-- Reconsideration, B-216933.2, Jan. 14, 1985, 85-1 C.P.D. ¶ 38. Moreover, it is the responsibility of a small business to file a timely and complete COC application with SBA in order to avail itself of the possible protection provided by statute and regulation against unreasonable determinations by contracting officers as to responsibility. L.A. Spievak Corp., B-216535, Nov. 26, 1984, 84-2 C.P.D. ¶ 556. We have held that where a firm does not file

for a COC with the SBA, we will not review the agency's determination of nonresponsibility since such a review, in effect, would amount to a substitution of this Office for the agency specifically authorized by statute to review these determinations. See L.A. Spievak Corp., B-216535, supra.

Accordingly, Ion's protest of the award under IFB-1157 is dismissed.

DLA-1279

The second contract award Ion protests concerns DLA's sole-source procurement of additional desalter kits from Van Ben. The DLA contracting officer received a purchase request and public exigency justification on February 28, 1985, for 700 kits. The chief of DLA's construction division indicated that these kits were in critically short supply due to Ion's first article testing failure and consequent inability to deliver the 30,933 kits awarded under two previous government contracts. To ensure uninterrupted supply, the construction division chief requested delivery of the 700 kits within 150 days. The contracting officer therefore executed a determination and finding, citing public exigency as his authority to negotiate the procurement. Because of the urgency of the request, he also determined to waive the requirement for synopsis and to use instead an oral solicitation.

The contracting officer, on February 8, had determined Ion nonresponsible under IFB-1157 for the identical kit and had referred the ultimate responsibility determination to SBA on February 12. Thus, at the time he received the purchase request, Van Ben was the only potential supplier of desalter kits whose responsibility was not in question. The contracting officer therefore conducted oral negotiations with Van Ben and concluded its price was fair and reasonable. Then, after the SBA closed its files on Ion's responsibility determination on March 12, without issuing the firm a COC, the contracting officer awarded the contract for the 700 kits to Van Ben (on March 29). The contract was completed as of April 24.

As a general rule, government procurements must be conducted on a competitive basis to the maximum extent

practicable. See Federal Data Corp., 59 Comp. Gen. 283 (1980), 80-1 C.P.D. ¶ 167. We have held, however, that a sole-source award is justified where time is of the essence and only one known source can meet the government's needs within the required time. Sooner Defense of Florida, Inc., B-216651, Feb. 11, 1985, 85-1 C.P.D. ¶ 178. Although our Office will scrutinize a sole-source procurement, we will not object to a sole-source award unless it is shown that the agency acted without a reasonable basis. Id.

Ion does not contest the urgency of DLA's need for desalter kits, but rather contends that DLA-1279 constitutes an illegal sole-source procurement because at least Ion, and perhaps other firms, could have met the Agency's needs. On IFB-1157, however, issued for kits identical to those needed under DLA-1279, only Ion and Van Ben submitted proposals, and we think it was reasonable, therefore, for the contracting officer to rely only on the bidders under that IFB as potential contractors for DLA-1279. Moreover, in view of DLA's concerns about Ion's responsibility under IFB-1157, and since SBA only recently had closed its file on Ion's responsibility because the company never submitted the information necessary for COC issuance, we believe the contracting officer properly did not consider Ion a qualified source for the DLA-1279 procurement. See Kan-Du Tool & Instrument Corp., B-210819, June 21, 1983, 83-2 C.P.D. ¶ 12. The contracting officer therefore acted reasonably in awarding DLA-1279 to Van Ben, the only other source known to the officer to be qualified.

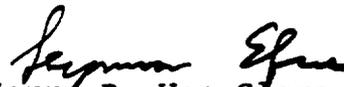
Ion also alleges that the shortage which prompted the urgent purchase request was created by the Agency's actions in issuing defective specifications on its previous contracts with Ion. Ion maintains that it was DLA's actions that caused Ion to fail the first article tests for those contracts. This failure, in turn, influenced the contracting officer to consider Ion nonresponsible and, thus, not a qualified source for the DLA-1279 procurement.

DLA acknowledges that Ion's allegation of defective specifications currently is being investigated. Ion's exclusion from consideration for award of DLA-1279, however, stems not from defective specifications on previous government contracts, but from Ion's status as a nonresponsible company at the time of the sole-source award to Van Ben, the result of Ion's failure to complete a COC application. The

quality of the specifications thus was not relevant to Ion's ineligibility for this sole-source procurement. Ion's protest of the award of DLA-1279 accordingly is denied.

Proposal Preparation Costs and Associated Expenses

Ion claims entitlement to recovery of its proposal preparation costs for IFB-1157 and the costs associated with pursuing these protests. Given our conclusion that DLA's contracting officer acted properly in his treatment of Ion's bid and in the award of contract DLA-1279 to Van Ben, the claim is denied.

*for*   
Harry R. Van Cleave  
General Counsel