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# DECISION



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

**FILE:** B-222800.2 **DATE:** May 5, 1986

**MATTER OF:** Coast Canvas Products II Co.,  
Inc.--Reconsideration

## DIGEST:

Prior dismissal of protest is affirmed where issue protester asserts it had raised but was misunderstood has no legal merit and where contracting agency now advises protester failed to timely furnish contracting officer with copy of protest filed with General Accounting Office, as required by applicable Bid Protest Regulations.

Coast Canvas Products II Co., Inc. (Coast), requests reconsideration of our April 14, 1986, dismissal of its protest against award to any other bidder under invitation for bids No. DLA100-86-B-0149, issued by the Defense Logistics Agency (DLA).

In its initial mailgram of protest, Coast alleged that it was the low bidder; that its application to the Small Business Administration (SBA) for a certificate of competency (COC) was "in process"; and "as experienced previously time is being manipulated by government to our detriment. Requested documents preaward survey report not furnished. Requests have been ignored."

Since, however, SBA has conclusive authority under 15 U.S.C. § 637(b)(7) (1982) to determine the responsibility of small business concerns by issuing or refusing to issue a COC, the General Accounting Office will not undertake an independent review of the contracting officer's nonresponsibility determination where the SBA affirms the determination by refusing to issue a COC and will not review the SBA decision unless there is a showing that it stemmed from fraud or bad faith or unless it is alleged that the SBA did not follow its own regulations or did not consider material information. See Consolidated Marketing Network Inc., B-218104, Feb. 12, 1985, 85-1 C.P.D. ¶ 190. Nor will we consider a protest where SBA has not yet made its COC determination, since SBA may decide to issue a COC, in which case there would be no need for a decision by our Office.

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The W.H. Smith Hardware Co., B-219327 et al., July 24, 1985, 85-2 C.P.D. ¶ 82. Accordingly, we found Coast's initial protest to be subject to dismissal.


In its mailgram request for reconsideration, Coast states that we "misread" the basis for its protest which, it asserts, was that contracting officials acted so as to prevent "a proper presentation to and consideration by the Small Business Administration [of Coast's application for a COC]." In view of the extremely limited factual information which Coast chose to provide in its mailgrams, we must assume it is objecting to either a refusal to provide it, or a delay in providing it, with a copy of the preaward survey upon which the contracting officer's nonresponsibility determination was based.

We have held, however, that the regulations do not contemplate that preaward survey results will be made available to bidders before award to permit contesting a nonresponsibility determination and that, therefore, a contracting agency was not required to turn negative preaward surveys over to a bidder before award for use in the COC procedure. See Darian Industries, Inc., B-221828 et al., Apr. 24, 1986, 86-1 C.P.D. ¶ \_\_\_\_\_, citing Camel Mfg. Co.--Request for Reconsideration, B-218473.4, Sept. 24, 1985, 85-2 C.P.D. ¶ 327.

Therefore, it is clear that this basis of protest is without merit and for dismissal without obtaining an agency report. 4 C.F.R. § 21.3(f) (1985).

In addition, we now have been informed by DLA that Coast failed to provide the contracting officer with a copy of the protest which it had filed with our Office. Our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985), require a protester to provide the contracting officer with a copy of the protest which has been filed with us within 1 day of its filing so that the contracting agency has an adequate opportunity to prepare its report in response to the protest. DLA had no occasion to advise us previously of Coast's failure to satisfy this requirement of our regulations because Coast's protest was dismissed on other grounds. The protester's failure to meet the 1-day requirement, in itself, would have warranted dismissal of the protest even if we had initially thought the case was appropriate for development and had requested a report from DLA.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong  
Deputy Associate General Counsel