

11/1/86

DECISION



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

FILE: B-222438

DATE: May 29, 1986

MATTER OF: M.G. Technology Corporation

DIGEST:

1. General Accounting Office will not consider a protest by a small business concerning a contracting agency's nonresponsibility determination where the protester fails to apply to the Small Business Administration for a certificate of competency after the nonresponsibility determination is made.
2. Protester fails to make any reasonable showing that the contracting agency's nonresponsibility determination was the result of discrimination by contracting officials against the protester where the protester offers no explanation and provides no supporting information or documentation for its general allegation of discrimination.

M.G. Technology Corporation protests the Army's determination that it is nonresponsible under invitation for bids (IFB) No. DAAE07-85-B-K161 for 15,551 fitted vehicle covers. We dismiss the protest.

The Army issued the IFB as a small business set-aside on October 25, 1985. Seven bids were received by bid opening on November 25; the protester was the apparent low bidder. The contracting officer then requested that the Defense Contract Administration Services Management Area/Springfield (DCASMA) perform a preaward survey on the protester and its proposed subcontractor, as well as examine whether the protester qualifies as a regular dealer or manufacturer under the Walsh-Healey Act as certified in its bid. The preaward survey recommended that no award be made to the protester because of its unsatisfactory production and quality assurance capabilities. The survey also found that the protester did not qualify as a regular dealer or manufacturer under the Walsh-Healey Act.

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By letter dated March 6, the contracting officer notified the protester that it had been found nonresponsible as a result of the DCASMA preaward survey. The letter also advised that any further consideration of the matter would be before the Small Business Administration (SBA). By letter dated March 7, the Army submitted its nonresponsibility determination to the SBA for review under the certificate of competency (COC) procedures. By letter dated March 24, the SBA notified the Army that the protester had decided not to apply for a COC.

The protest then was filed with our Office on March 25. The protester challenged the Army's nonresponsibility determination and alleged that the contracting officials had discriminated against the firm on the basis of religion and nationality. The protester did not elaborate on this general allegation. The protester also disagreed with the findings in the preaward survey regarding its production and quality control capabilities and its status under the Walsh-Healey Act, but provided no detailed explanation of its position. Finally, the protester conceded that it had not applied to the SBA for a COC and stated that it "strongly opposed" any requirement to pursue its case with the SBA since, in the protester's view, the Army's nonresponsibility determination was the result of discrimination.

In its comments on the Army's report on the protest, the protester discussed in greater detail its objections to the specific findings in the preaward survey. According to the protester, the fact that, in its view, the survey findings are erroneous, demonstrates that the nonresponsibility determination was based on prejudice toward the protester.

Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to determine the responsibility of a small business by issuing or denying a COC. When a contracting agency makes a nonresponsibility determination regarding a small business, it is the responsibility of the firm involved to apply for a COC from the SBA, in order to avail itself of the protection provided by the COC procedures against unreasonable determinations by the contracting officer. Ion Exchange Products, Inc., B-218578, et al., July 15, 1985, 85-2 CPD ¶ 52. Where, as in this case, the firm fails to apply for a COC, we will not review the contracting officer's determination of nonresponsibility since such a review in effect would substitute our Office for the SBA, the agency specifically authorized by statute to conclusively review nonresponsibility determinations. L.A. Spievack Corp., B-216535, Nov. 26, 1984, 84-2 CPD ¶ 556.

Similarly, we will not consider the protester's challenge to the Army's determination that the protester is not a regular dealer or manufacturer under the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the SBA where, as here, a small business is involved, and by the Secretary of Labor. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(9) (1985); Pacific Sky Supply, Inc., B-217226, et al., Jan. 28, 1985, 85-1 CPD ¶ 111.

In any event, even if the protester had followed the COC procedures and the SBA had declined to issue a COC, we would not consider the protest to the extent that the protester merely disagrees with the findings underlying the Army's nonresponsibility determination. In such cases, our Office limits its review of a denial of a COC to instances in which the protester makes a prima facie showing of fraud or bad faith on the part of contracting officials. 4 C.F.R. § 21.3(f)(3); The W.H. Smith Hardware Co., B-219327.4, Oct. 8, 1985, 85-2 CPD ¶ 391.

With regard to the allegation of discrimination, the protester has offered no explanation and provided no supporting information or documentation for its allegation. As with allegations of fraud or bad faith, some reasonable showing of possible discrimination beyond a bare allegation is necessary before we will consider such a complaint. Wallace & Wallace, Inc. et al., B-209859, et al., Dec. 2, 1982, 82-2 CPD ¶ 501. Here, the protester has offered nothing more than its general statement that the preaward survey was conducted by agency officials prejudiced against the protester; instead, as discussed above, the protester's comments focus on the protester's disagreement with the conclusions in the preaward survey regarding its capability to perform. The protester's initial submission did refer to an earlier protest filed by the protester concerning a different solicitation, which the protester later withdrew when the Army agreed to conduct another preaward survey. The protester made the same general allegation of discrimination in that protest, but, as in this case, the protester failed to present any support for the allegation. As a result, we find that the protester has failed to make any reasonable showing in support of its allegation of discrimination.

The protest is dismissed.

Ronald Berger
Ronald Berger
Deputy Associate
General Counsel