



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ridgecrest Office Supplies

File: B-223213.2

Date: July 7, 1986

DIGEST

1. Protest against a determination by the Small Business Administration (SBA) that a small business is ineligible for a certificate of competency (COC), even if otherwise for consideration, is untimely where the protest was first filed with the General Accounting Office more than 10 days after the firm was advised by the SBA of the denial of a COC.
2. Protest by small business bidder is properly for dismissal where the protester has not made a prima facie showing that the Small Business Administration has acted in bad faith in determining that it is ineligible for a certificate of competency.

DECISION

By letter dated May 22, 1986, which was filed in our Office on June 3, Ridgecrest Office Supplies, a division of T.O.S.S. Inc. (Ridgecrest) has protested the determination by the Small Business Administration (SBA) that it is ineligible for a certificate of competency (COC) under solicitation No. F04700-86-B-0001, issued by Edwards Air Force Base, California, as a small business set-aside.

The protest is dismissed.

This is the second protest by Ridgecrest concerning this procurement. On May 28, 1986, our Office dismissed as untimely a prior protest filed by Ridgecrest in which it argued that the solicitation should be canceled on the basis that the issuance of the solicitation as a small business set-aside was improper. Ridgecrest has not requested reconsideration of our dismissal. Subsequent to our dismissal of its earlier protest, Ridgecrest filed with our Office its current protest of the SBA's denial of a COC.^{1/}

^{1/} The current protest was postmarked May 23.

The SBA determined that Ridgecrest was ineligible for a COC because it would not be performing a significant portion of the work under the contract using personnel on its own payroll as is required, in pertinent part, by SBA Standard Operating Procedure (SOP) 60 04 02.

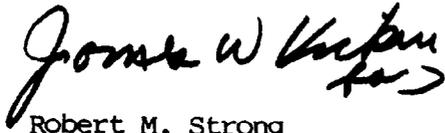
Ridgecrest has protested the SBA's denial of a COC on the basis that the only reason it was denied the COC was its failure to meet the requirements of SOP 60 04 02 and that the SBA did not find it deficient with respect to the matter of responsibility for any of the reasons cited by the contracting officer. Furthermore, the protester contends that none of the bidders could meet the requirements of SOP 60 04 02 in that the other bidders would also have to use the products of a large business in performing the contract. In addition, the protester states that it believes that there may be "political factions" that are "consciously" trying to prevent it from being awarded the contract.

Although Ridgecrest was aware on May 16 of the SBA's denial of its application for a COC and the reasons therefor, its protest of the SBA's denial of the COC was not filed with this Office until June 3. Although Ridgecrest had filed an earlier protest under the solicitation on May 28 concerning another issue, it is well established that new issues raised by a protester must independently satisfy our timeliness requirements. See Organization Systems Inc., B-220146, Oct. 31, 1985, 85-2 C.P.D. ¶ 498. Our Bid Protest Regulations provide that a protest must be filed with this Office within 10 working days of the date that the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). Here, Ridgecrest's protest of the SBA's denial of the COC is untimely since it was first filed with this Office more than 10 working days from when it first learned of the SBA's action. See Sermor, Inc.--Request for Reconsideration, B-219173.2, Oct. 28, 1985, 85-2 C.P.D. ¶ 470.

We note that even if the protest had been timely filed, it would be for dismissal. Because of the SBA's conclusive authority to determine the responsibility of a small business bidder, this Office generally views a finding of ineligibility for a COC as tantamount to an affirmation of the procuring agency's determination of nonresponsibility and, therefore, not subject to our review absent a prima facie showing of fraud or bad faith or where the small business has introduced new evidence of its entitlement for a COC. See American Ordnance Corp., B-216377, Sept. 27, 1984, 84-2 C.P.D. ¶ 362.

The protester has not presented any evidence that it is in fact eligible for a COC under SOP 60 04 02. Furthermore, the protester's bare allegation that certain unnamed "political factions" may be attempting to deprive it of the contract award is not sufficient to establish a prima facie showing that the SBA acted improperly or in bad faith in this matter. See Surgical Instrument Co. of America, B-215931, Aug. 28, 1984, 84-2 C.P.D. ¶ 233.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "Robert M. Strong". The signature is written in a cursive style with a large initial "R" and "S".

Robert M. Strong
Deputy Associate General Counsel