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DECISION



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

FILE: B-221584.4 **DATE:** June 19, 1986

MATTER OF: Sealtech, Inc.--Request for
Reconsideration

DIGEST:

General Accounting Office will not recommend further consideration of a nonresponsibility determination where protester fails to demonstrate that an alleged change in circumstances, occurring after the Small Business Administration's denial of a certificate of competency, represents a material change in the principal factors on which the nonresponsibility determination was based.

Sealtech, Inc. (Sealtech), requests reconsideration of our decision in Sealtech, Inc., B-221584.3, Apr. 16, 1986, 86-1 C.P.D. ¶ 373, wherein we dismissed its protest against the refusal of the Defense Logistics Agency (DLA) to award it the small business set-aside portion of invitation for bids No. DLA100-85-B-1205, for the supply of goggles. We affirm our prior decision.

Based upon a preaward survey conducted by the appropriate Defense Contract Administration Services Management Area, DLA found Sealtech's technical production, quality assurance and financial capabilities to be unsatisfactory. The contracting officer therefore proposed to reject Sealtech's bid on the grounds that the firm was nonresponsible due to a lack of capacity and credit. Since, however, Sealtech is a small business concern, the question of its responsibility to perform both the unrestricted and set-aside portions of the procurement was referred to the Small Business Administration (SBA) for the possible issuance of a certificate of competency (COC).

Although the SBA issued a COC certifying Sealtech's responsibility under the solicitation, it informed DLA that the COC was "for the unrestricted portion only." Accordingly, DLA refused to make award to Sealtech for the

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set-aside portion of the requirement, maintaining that the firm was not a responsible offeror for that portion.

Sealtech thereupon protested to our Office, alleging that the contracting officer had lacked accurate information about the firm's production capabilities and that there is "incorrect information" in the government files. The protester argued that before the contracting officer proceeded with an award of the set-aside portion, she must reexamine Sealtech's responsibility and, if the determination is negative, the "[contracting officer] has the responsibility to refer it to the SBA for a COC determination."

In our prior decision, we noted that the contracting officer already had referred to the SBA the question of Sealtech's responsibility as to both the unrestricted and set-aside portions of the procurement, and that the SBA granted a COC which was expressly limited to the "unrestricted portion only." The SBA therefore already had denied Sealtech a COC for the set-aside portion and we knew of no requirement that the contracting officer make a second determination of Sealtech's responsibility and, if it is negative, make a second referral to the SBA for a COC.

We further indicated that our Office does not review the SBA's refusal to issue a COC 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. Sealtech, however, made no showing of fraud or bad faith.

At most, Sealtech's allegations amounted to an argument that as a result of the inadequacy of the preaward survey, the information available to the SBA was incorrect and the SBA failed to consider material information. Sealtech, however, did not identify and correct any specific factual inaccuracies or omissions. Nor did it show how it was prejudiced by any deficiencies in the record--deficiencies which Sealtech had the burden and the opportunity to correct in making its application for a COC. Cf. R.S. Data Systems--Reconsideration, B-220961.2, Dec. 18, 1985, 65 Comp. Gen. _____, 85-2 C.P.D. ¶ 687. Accordingly, we dismissed its protest.

In its request for reconsideration, Sealtech states that "the terms and conditions have changed for the set-aside portion . . . Condition that changed is that the delivery is now a different schedule" than when the SBA refused to issue a COC to Sealtech. In particular, we note that while the solicitation required the initial deliveries--13,728 units under the unrestricted portion and 13,680 units under the set-aside portion--under both the unrestricted and set-aside portions to be made on or before 210 days after date of award, with subsequent deliveries every 30 days, the actual delivery dates under the contracts awarded for both portions now vary by 36 days as a result of differing dates of award. Sealtech's contract for the unrestricted portion requires delivery of the initial quantity by October 22, 1986, 210 days after the March 26 date of award, while the contract awarded to Stemaco Products, Inc. (Stemaco), for the protested set-aside portion of the solicitation requires delivery of the initial quantity by November 27, 1986, 210 days after the May 1 date of award.

Sealtech maintains that the issue of Sealtech's responsibility for the set-aside portion must again be referred to the SBA because the current 36-day difference in delivery schedules for the two portions allegedly "allows time to build up the production at a different rate and consequently makes a difference in the cash flow."

We disagree.

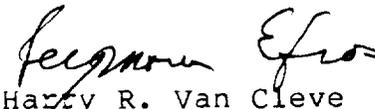
We recognize that the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.105-1(b)(3) (1985), provides that information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award. Accordingly, we have held that where time permits, further consideration of a nonresponsibility determination is appropriate if there appears to be a material change in the principal factor on which a nonresponsibility determination was made and affirmed by denial of a COC. See Tomko, Inc., 63 Comp. Gen. 218 (1984), 84-1 C.P.D. ¶ 202; see also FAR, § 19.602-4(a).

Sealtech, however, has not demonstrated that the 36-day difference in the required delivery schedules represents a material change in the principal factors on which the nonresponsibility determination was based. In explaining

the recommendation against award, the preaward survey indicated that Sealtech lacks a sufficient number of experienced and trained full-time, quality-control personnel to assure that the goggles manufactured by Sealtech conform to the specifications, that Sealtech's proposed source for the rubber compound to be used in the goggles had revealed that the compound would not meet all of the specifications, and that Sealtech lacks an operating line of credit and sufficient assets to support an award for the full quantity. Although a copy of the preaward survey has been provided to Sealtech, the protester does not explain how the alleged change in cash-flow will remedy its quality control and materials deficiencies. Nor does it explain how what would appear to be at most a relatively minor shift in cash-flow will compensate for the lack of an operating line of credit and for insufficient assets.

Sealtech's reconsideration request establishes no error of fact or law in our prior decision warranting reversal or modification.

The prior decision therefore is affirmed.

for 
Harry R. Van Cleve
General Counsel