



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ferrite Engineering Labs
File: B-223664
Date: August 19, 1986

DIGEST

Allegation that contracting activity and the Small Business Administration acted fraudulently and in bad faith in finding a small business concern nonresponsible is dismissed where the protester fails to submit any evidence substantiating its claim.

DECISION

Ferrite Engineering Labs protests the rejection of its bid under invitation for bids (IFB) No. DAAB07-86-B-U417, issued by the U.S. Army Communications-Electronics Command (CECOM), Fort Monmouth, New Jersey, on the basis that Ferrite is a nonresponsible bidder.

Ferrite, a small business concern located in New York State, charges that CECOM and the New York Regional Office of the Small Business Administration (SBA) are engaged in a criminal conspiracy to deny it the opportunity to compete for a contract under the subject solicitation. Specifically, Ferrite contends that the two agencies deliberately misused the Certificate of Competency (COC) procedures to disqualify its apparent low bid from this competition.

This protest is virtually identical to an earlier one that Ferrite filed with our Office concerning another solicitation (DAAB07-85-B-B234) issued by CECOM. In that procurement, CECOM initially found Ferrite to be nonresponsible and, in accord with applicable regulations, referred the matter to the SBA for final resolution under the COC procedures. The SBA ultimately closed its file on the case without considering whether to grant a COC because Ferrite, despite a 3-day extension, failed to submit an acceptable application. As is the case here, Ferrite alleged that the agency's rejection of

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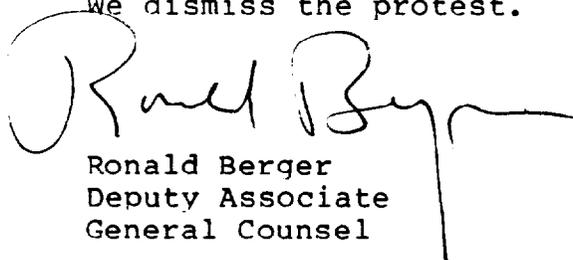
its bid stemmed from a pattern of continuous discriminatory and prejudicial treatment on the part of CECOM and the SBA.

In denying the protest, we stated that where a firm files an unacceptable application, we generally do not review the agency's negative determination of responsibility, since by such action we would be substituting our Office for the agency specifically authorized by statute to perform such a review. Ferrite Engineering Labs, B-222972, July 28, 1986, 86-2 CPD ¶ _____. We also stated, however, that the record did not support Ferrite's allegations concerning bad faith or improper conduct on the part of CECOM and SBA officials. In fact, we found that the record demonstrated that the agencies had followed all applicable procedures when considering Ferrite's capabilities to perform, including the completion of a comprehensive preaward survey that substantiated CECOM's initial concerns regarding Ferrite's ability to perform.

In the present case, the agency advises us that CECOM again initially found Ferrite nonresponsible on the basis of its questionable ability to satisfy solicitation requirements. CECOM again referred the matter to SBA, which, according to the agency, this time refused to grant a COC because of Ferrite's doubtful ability to perform. Ferrite alleges that the rejection of this bid stems from the same criminal conspiracy alluded to in its first protest; in fact, as support for its new protest, Ferrite refers to the information previously presented.

As we found in our first decision, the evidence presented by Ferrite is not sufficient to support a finding of bad faith or fraud on the part of CECOM and SBA officials. Since Ferrite has merely recited its previous unsubstantiated allegations, and has not presented any additional evidence supporting its claim that the concerned agency officials, either independently or in concert, engaged in any wrongdoing when considering Ferrite's capability to perform under the subject IFB, we have no basis for further considering this matter.

We dismiss the protest.



Ronald Berger
Deputy Associate
General Counsel