



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Engineering Corporation of America--
Reconsideration
File: B-230615.2
Date: June 21, 1988

DIGEST

Where agency specifically rebuts the issue raised in the initial protest and the protester fails to address the agency's rebuttal in its comments on the agency's report, the issue is deemed abandoned.

DECISION

Engineering Corporation of America (ECA) requests that we reconsider our decision, Engineering Corp. of America, B-230615, Mar. 15, 1988, 88-1 CPD ¶ 268, dismissing its protest of the rejection of its bid as nonresponsive under solicitation number N68836-88-B-0020, issued by the Naval Supply Center, Department of the Navy, Jacksonville, Florida, for keypunch services. On reconsideration we again dismiss the protest.

Material furnished by ECA in its initial protest appeared to indicate that the solicitation was set aside by the Navy for small disadvantaged business concerns under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). The Navy had rejected ECA's bid as nonresponsive because, although ECA was a small disadvantaged business, its parent company was only a small business, which made ECA ineligible for award. ECA protested that it should be certified as a small minority business based on its current financial status. We dismissed the protest because the eligibility of a firm for assistance under section 8(a) of the Small Business Act is a matter for determination by the Small Business Administration (SBA), and is not subject to review by our Office.

In its request for reconsideration, ECA argues that we should consider its protest because the solicitation was not an 8(a) set-aside, but rather a total set-aside for small disadvantaged businesses (SDBs) pursuant to Defense Federal Acquisition Regulation Supplement §§ 219.501-70 and 219.502-72, 52 Fed. Reg. 16,263 and 16,266 (1987). This special category of set-aside was authorized by section 1207

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of the National Defense Authorization Act for fiscal year 1987, Pub. L. No. 99-661, 100 Stat. 3816 (1986), which establishes a Department of Defense (DOD) goal of awards to SDBs of 5 percent of the dollar value of total contracts to be awarded by DOD for fiscal years 1987, 1988 and 1989. Based on this information, we reopened the file, requested reports from the Navy and SBA, and requested comments on the reports from ECA.

The Navy had found the low bidder at the December 21, 1987, bid opening nonresponsive, and requested the Defense Contract Administration Services Management Area to perform a preaward survey on ECA, the second low bidder. Based on the preaward survey, the contracting officer determined that ECA was nonresponsive because ECA did not produce evidence of an ability to employ the necessary quantity of skilled labor required to perform the contract. The contracting officer then referred the matter to SBA for a certificate of competency (COC) determination. On February 22, 1988, the SBA determined that ECA was ineligible for a COC because it did not meet the SBA requirement that a firm perform a significant portion of the proposed contract with its own employees. On February 23, ECA presented the SBA with amendments to its franchise agreement with its affiliate, ECA-Seattle, which ECA believed would allow the Navy to determine that ECA was responsible. ECA also asked the Navy on February 23 to reopen the case by submitting it to SBA for a new COC determination.

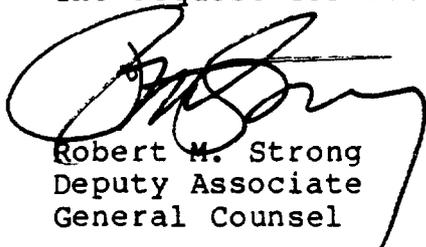
Because of the information received from the SBA that the persons performing the services under the contract would be employed by ECA-Seattle, the Navy contacted ECA-Seattle. ECA-Seattle stated that although ECA was a small disadvantaged business firm, ECA-Seattle was only a small business firm. Because the Navy considered ECA-Seattle a parent company and not disadvantaged, it considered ECA "nonresponsive," i.e., ineligible for award of a total set-aside for small disadvantaged business. The Navy determined that the prior nonresponsibility determination remained valid, declined to seek a second SBA COC review, and awarded a contract to the third low bidder on February 29, 1988.

ECA protests that the Navy arbitrarily denied its request to consider additional evidence which would allow the Navy to determine ECA to be responsible, and improperly found it not to be a small disadvantaged business. Therefore, ECA requests that our Office direct the contracting officer to refer the case back to the SBA for the completion of a COC determination, and, if a COC is granted, to award the contract to ECA.

The SBA report states that the franchise amendments which ECA requested the Navy and the SBA to review would not allow ECA to become eligible for a COC but rather would serve to make ECA ineligible for award of the set-aside. According to the SBA, which has conclusive authority to determine matters of small business size status, the amendments do not remove the shadow of agency surrounding the relationship between ECA and ECA-Seattle, because ECA-Seattle would keep ECA employees on its payroll. ECA-Seattle is a small business, not a small, disadvantaged business; therefore, the SBA concludes that ECA is not eligible for a small disadvantaged business set-aside because its parent company is not small and disadvantaged.

In its comments on the agency reports, ECA does not rebut or even address the SBA's position. We therefore consider ECA to have abandoned its protest and we will not consider it further. See TM Systems, Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

The request for reconsideration is dismissed.



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