

*Lebowitz*



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Durodyne, Inc.

**File:** B-235437

**Date:** June 5, 1989

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### DIGEST

Where a small business concern protests a nonresponsibility determination by a contracting officer and the subsequent refusal of the Small Business Administration (SBA) to issue a certificate of competency to the firm, the General Accounting Office will not review the protest absent a showing of either possible fraud or bad faith on the part of the SBA or that the SBA failed to consider vital information bearing on the firm's responsibility.

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### DECISION

Durodyne, Inc., protests the rejection of its proposal under request for proposals (RFP) No. DLA700-88-R-0649, issued by the Defense Construction Supply Center (DCSC) for refueling hoses, used by the Navy for refueling ships at sea, on the basis that Durodyne is a nonresponsible offeror. Durodyne also protests the refusal of the Small Business Administration (SBA) to issue a certificate of competency (COC).

We dismiss the protest.

On December 5, 1988, in response to the potential safety hazard created by prematurely bursting refueling hoses while in use, DCSC issued this RFP, on an unrestricted basis, requiring refueling hoses to be manufactured in accordance with revised military specification No. MIL-H-22240F (Revision F) which, as compared to previously used military specification No. MIL-H-22240E (Revision E), imposed a more stringent fabrication process and new testing and inspection requirements.

Durodyne was the apparent low offeror. Following a preaward survey conducted in January 1989, the contracting officer determined Durodyne to be a nonresponsible offeror because of Durodyne's unsatisfactory technical and quality assurance capability and its previous poor performance on the same

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item. In determining Durodyne to be nonresponsible, the contracting officer pointed out that Durodyne had been the low offeror on the previous three contracts awarded by DCSC under the less stringent Revision E specification requirements, and that hoses supplied by Durodyne under two of these contracts had failed in the field. The record shows that the contracting officer also relied upon the results of a test conducted by the government's independent testing laboratory on a section of a randomly selected Durodyne hose already supplied to DCSC which confirmed that Durodyne's hoses were nonconforming to Revision E specification requirements.

On February 21, the contracting officer referred the question of Durodyne's responsibility to the SBA for possible issuance of a COC. By letter dated April 25, the SBA declined to reverse the contracting officer's nonresponsibility determination and therefore did not issue a COC to Durodyne. In its letter, the SBA stated that although the test results of Durodyne's own testing laboratory showed that Durodyne's hoses met specifications, this was not sufficient to refute the results obtained by the government's testing laboratory which indicated a failure in several areas of Durodyne's fuel hoses. Because Durodyne had not demonstrated the technical ability to produce similar, less stringently specified hoses previously, the SBA concluded there was not a reasonable assurance that Durodyne could perform the proposed contract in a satisfactory manner. This protest followed.

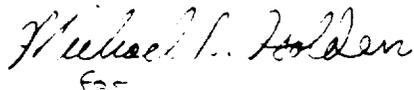
Durodyne essentially argues that the contracting officer's nonresponsibility determination was unreasonable because it was based on "unsupported" allegations of poor past performance (including questionable test results from the government's testing laboratory). Durodyne argues that our Office will review a contracting officer's nonresponsibility determination where that determination is unreasonable. Durodyne also contends that the SBA failed to consider vital information bearing on Durodyne's responsibility when it relied on the same "unsupported" allegations in denying a COC to Durodyne.

With respect to Durodyne's challenge of DCSC's initial nonresponsibility determination, the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), gives the SBA, not our Office, the conclusive authority to review a contracting officer's determination that a small business is not responsible. While we do review the reasonableness of a nonresponsibility determination when it involves a large business, we do not generally review a protest by a small business concern that a contracting agency unreasonably found the concern to be nonresponsible since that role is by statute essentially for

the SBA to perform, which it does under its COC procedures.<sup>1/</sup> Therefore, our Office limits its review of the denial of a COC to instances in which the protester's submission indicates that SBA action on a referral may have been taken fraudulently or in bad faith or that the SBA failed to consider vital information bearing on the firm's responsibility. Spheres Company, B-225755, June 5, 1987, 87-1 CPD ¶ 573. Durodyne does not allege fraud or bad faith on the part of the SBA.

With respect to Durodyne's allegation that the SBA failed to consider vital information bearing upon Durodyne's responsibility, we point out that Durodyne had the opportunity to present all relevant information in making its application for a COC. Durodyne has also failed to show what information the SBA failed to consider. Rather, the protester merely alleges that the SBA should not have considered the test results from the government's independent testing laboratory. Here, the SBA considered all of the information before it, including the results from both DCSC's and Durodyne's tests. We therefore conclude that the SBA did not ignore vital information bearing on the protester's responsibility, and that we have no basis to question the SBA's denial of a COC to Durodyne.

The protest is dismissed.



Ronald Berger  
Associate General Counsel

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<sup>1/</sup> The protester cites SPM Manufacturing Corp., 67 Comp. Gen. 375 (1988), 88-1 CPD ¶ 370, for the proposition that our Office will review a nonresponsibility determination involving a small business. In that case, however, unlike here, the SBA declined to exercise its COC jurisdiction because the small business bidder proposed to furnish a foreign product. In such circumstances, we will review a contracting officer's nonresponsibility determination.