

Van Schaik



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: OYO Geospace

File: B-235456

Date: June 14, 1989

DIGEST

Protest of agency's rejection of proposal is academic where agency reopens negotiations with offeror. Although protester contends that agency should refer matter to Small Business Administration for determination of its financial capability under certificate of competency procedures before conducting negotiations, there is no requirement that agency do so until firm is determined to be in line for award but to be nonresponsible.

DECISION

OYO Geospace protests the rejection of its offer under solicitation No. GSC-KES-B-C-00040-N, issued by the General Services Administration (GSA) for a nonmandatory schedule contract for automatic data processing equipment. We dismiss the protest.

Based on a pre-award survey apparently conducted before negotiations regarding the offer had been completed, GSA informed OYO that it lacked adequate financial capability for the contract. By letter of January 13, 1989, GSA also advised OYO that it could apply to the Small Business Administration (SBA) for a certificate of competency (COC) but that it should indicate its intent to do so by January 23. When GSA received OYO's reply on January 26, it informed the firm that the reply was late and the firm's offer could not be considered further.

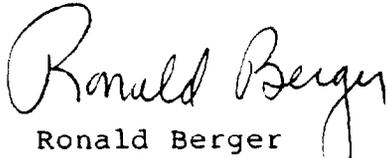
OYO protested to this Office that GSA had improperly refused to refer the COC request to the SBA and requests that we require the reopening of negotiations with the firm and referral of the matter to the SBA.

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By letter of May 10 to OYO, GSA offered to reopen negotiations with the firm and requested that OYO furnish a letter indicating the firm's willingness to apply for a COC if negotiations are otherwise successful. According to GSA, it is currently conducting negotiations with OYO.

Since GSA is conducting negotiations with the firm, OYO's protest is academic. See Medical Devices of Fall River, Inc., B-232336, Sept. 14, 1988, 88-2 CPD ¶ 247. OYO, however, continues to urge that GSA refer the matter to SBA for a determination under the COC procedures now, before negotiations are completed. If OYO is found by GSA to be nonresponsible as a small business it is entitled to a review of that determination by the SBA. Nonetheless, there is no requirement that an agency make the referral to the SBA under the COC procedures until it has determined that the firm's offer is otherwise in line for award.

The protest is dismissed.



Ronald Berger
Associate General Counsel