

C. Sklarew



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Mechanical Equipment Company Inc.  
**File:** B-239208  
**Date:** April 25, 1990

Frank J. Zarambo, for the protester.  
Craig Hodge, Esq., and Jack Olson, Esq., Department of the Army, for the agency.  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest that agency approved low offeror as a source of supply after submission of initial proposals is dismissed where solicitation permitted such approval prior to time of award.

## DECISION

Mechanical Equipment Company Inc. (MECO) protests the award of a contract to any other offeror under request for proposals (RFP) No. DAAK01-89-R-0061, issued by the Department of the Army for the supply of water filtration cartridges. We dismiss the protest because it fails to state a valid basis of protest. 4 C.F.R. § 21.3(m) (1989).

The solicitation was restricted to qualified sources and listed three firms, including MECO, that had been approved for the required product. It also advised offerors that new sources would be eligible for award, defining these as "additional sources of supply that are approved prior to the time of award."

Four firms, including MECO, submitted timely proposals in response to the RFP. While MECO was the only offeror that was listed as a previously approved source, and therefore was the only firm eligible for award on the closing date for

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receipt of initial proposals, MECO had submitted the highest price. The agency found MECO (a small business concern) nonresponsible and referred the matter to the Small Business Administration (SBA) for consideration under its Certificate of Competency (COC) procedures. While MECO's COC application was being considered, the Army continued to consider offerors that had applied for approval as qualified sources for this item.

The SBA issued a COC for MECO and advised the agency that it was required to award the contract to MECO "without requiring it to meet any other requirement of responsibility or eligibility." The Army then approved one of the other offerors as a new source of supply. The newly approved source had submitted the lowest priced initial offer.

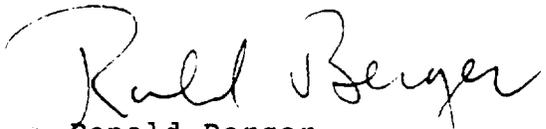
MECO contends that it is entitled to the award because it received the COC and is a qualified source. MECO argues, in essence, that it was improper for the agency to continue to consider other firms after the closing date for receipt of initial proposals.

The RFP provided that new sources could compete, subject to being found qualified prior to award. In addition, the solicitation stated that if it were determined to be in the government's interest, the acquisition could be delayed to allow time for an offeror to become a new source of supply. Thus, an offeror could not be excluded from consideration merely because it was not an approved source on the closing date for receipt of initial proposals. See American Ballscrew, B-223915, Dec. 10, 1986, 86-2 CPD ¶ 664. We therefore have no basis to object to AMC's consideration and approval of additional sources, that submitted offers by the closing date, up to the time of award.

The protester nonetheless argues that the issuance of the COC required the agency to award MECO the contract and in effect prohibited further consideration of any other offers. We disagree. While the Small Business Act, 15 U.S.C. § 637(b)(7) (1988), gives the SBA the conclusive authority to review a contracting officer's determination that a small business concern is not responsible, this authority is limited to the issue of the firm's responsibility. See Go Leasing, Inc.; Sierra Pacific Airlines, B-209202, B-209202.2, Apr. 14, 1983, 83-1 CPD ¶ 405. Here, at the time the agency referred the issue of MECO's nonresponsibility to the SBA, MECO was the only

offeror with source approval. However, prior to award, a lower-priced source was approved. At that point, the agency properly could award the contract to the newly-approved low offeror under the RFP.

The protest is dismissed.

  
Ronald Berger  
Associate General Counsel