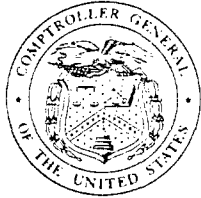


Pro. LAW I
G. Ruppert

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-193089

DATE: January 30, 1979

MATTER OF: The Forestry Account

DIGEST:

Contracting officer's rejection of low small business bidder as nonresponsible without referring matter of firm's responsibility to SBA was improper; [Contracting officer is required under FPR to refer all matters of responsibility to appropriate SBA official for consideration] under certificate of competency program even where procurement is less than \$10,000.

The Forestry Account, a small business, protests the award of contracts for performing stand examination work to any other firm under invitations for bids (IFB) Nos. 7-78-41 and 7-78-36, issued by the United States Department of Agriculture, Ochocho National Forest.

On September 21, the contracting officer advised the protester that its low bid under each of the IFB's was being rejected on the basis that the firm was not a responsible contractor. The contracting officer stated that her decision was based upon the protester's past unsatisfactory performance.

The contracting officer did not initially refer the question of the protester's responsibility to the Small Business Administration (SBA) as she did not believe that she was required to do so where the proposed award was for less than \$10,000. Further, the contracting officer was of the opinion that the certificate of competency (COC) procedure did not apply where the contracting officer has found a small business concern not to be responsible for reasons other than lack of capacity or credit. (Although the matter was subsequently referred to an SBA regional office, it was not considered because the awards had been made.) An award was made

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to Patrick Pilcher on September 20, 1978, under IFB 7-78-41, and award was made on September 29, 1978, to Silva Services, Inc., under IFB 7-78-36. We have been informally advised by a representative of the Forest Service that no work has been performed on either contract.


Counsel for the protester contends that the Forestry Account is a responsible bidder stating that the firm has recently assumed and completed three very similar contracts for the Deschutes National Forest.

The Forest Service states that at the time this procurement action was being conducted, the contracting officer was under the erroneous impression that COC referrals to SBA were optional, within the discretion of the contracting officer, as to proposed awards of more than \$2,500, but less than \$10,000. However, the applicable Federal Procurement Regulations (FPR) § 1-1. 708-2(2) (1964 ed. amend. 192) requires the contracting officer to refer all questions regarding a small business firm's responsibility to the SBA for a final disposition under the COC procedure. The Forest Service reports that this FPR regulation, issued June 14, 1978, was not received in the Forest Service field procurement offices until October 27, 1978, which was after award. The prior FPR regulation did not require the contracting officer to refer all questions of a small business firm's responsibility to SBA for determination and, therefore, the contracting officer did not do so here.

Under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (1976), as amended by Pub. L. No. 95-89, effective August 4, 1977, and the applicable FPR section, no small business concern may be precluded from award because of nonresponsibility without referral of the matter to SBA for a final disposition under the COC procedure regardless of the amount of the procurement. Further, the SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of responsibility. See Com-Data, Inc., B-191289, June 23, 1978, 78-1 CPD 459.

By letter of today to the Secretary of Agriculture, we are recommending that the contracting officer immediately refer the matter to appropriate SBA officials for possible issuance of a COC. If a COC is issued, and the protester is willing to accept an award under the subject IFB's, the current contracts with Silva Services, Inc. (under IFB No. 7-78-36), and Patrick Pilcher (under IFB No. 7-78-41) should be terminated for the convenience of the Government. If a COC is not issued or the protester refuses such an award, no further action is required.

Accordingly, the protest is sustained.


Deputy Comptroller General
of United States