



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20541

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B-177727

June 6, 1973

Robert Sheriff's Moss & Associates  
1819 H Street, NW.  
Washington, D. C. 20006

Gentlemen:

Reference is made to your letter of April 25, 1973, and prior correspondence, protesting on behalf of Avien Incorporated (Avien) the award of a contract to any other firm under IFB DAAA09-73-B-0060, issued by the Army Munitions Command, (AMCOM), Joliet, Illinois.

The subject solicitation, issued on September 6, 1972, was to procure a total of 30,637 M114 safety and arming devices on a multi-year basis. Four bids were received in response to the invitation with Avien being the low bidder. As a result of the preaward survey conducted on November 9, 1972, at Avien's plant, Avien was determined to be nonresponsible with respect to technical capability, production capability, financial capability, purchasing and subcontracting, quality assurance capability, labor resources and the ability to meet the required schedule. This determination of nonresponsibility was referred to the Small Business Administration (SBA) to determine if a Certificate of Competency (COC) should be issued, such referral being pursuant to paragraph 1-705.4 of the Armed Services Procurement Regulation (ASPR). On December 22, 1972, SBA refused to issue the COC and on December 27, 1972, Avien protested to this Office the unfavorable preaward survey and the denial of the COC. On January 11, 1973, an award was made to KDI Precision Products (KDI) due to an urgency determination made pursuant to ASPR 2-407.8(h)(3).

You have contended that the preaward survey report was inaccurate and that personnel from Picatinny Arsenal participated in the preaward survey to favor KDI, the incumbent contractor for the M114 safety and arming device. You have stated that the actual reason Avien was found to be nonresponsible and denied a COC was that it was a debtor-in-possession under Chapter XI of the Bankruptcy Act.

However, the contracting officer's report, a copy of which was furnished to you, indicates that the contracting officer's determination of financial nonresponsibility was based on financial factors beyond the fact that Avien was operating as a debtor-in-possession under Chapter XI of the Bankruptcy Act. Further, even if the preaward

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survey report contained some inaccuracies, since the SBA made an independent investigation and review of the situation and refused to issue a COC, that is a persuasive confirmation of the contracting officer's determination that Ayien did not have all the qualifications necessary to be considered a responsible bidder. B-159933, November 18, 1966, and B-175970, July 18, 1972. Although you question the basis of the SBA denial, it is not a function of our Office to review SBA determinations in such matters or to require the issuance of a COC. B-175970, supra.

Accordingly, the protest is denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States