

13489 PL-1
J. Boyle
DECISION



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

[Protest of Bid Rejection as Nonresponsible]

FILE: B-197777

DATE: April 21, 1980 ✓

MATTER OF: Hacking Labs

DIGEST:

Where small business concern is found to be nonresponsible by procuring activity, subsequent denial of certificate of competency by Small Business Administration is viewed as affirmation of nonresponsibility determination and, absent prima facie showing of fraud or bad faith, matter will not be considered by GAO.

Hacking Labs (HL) protests the Army's rejection of its firm as nonresponsible under solicitation No. DAAG08-80-R-0033 and the denial by the Small Business Administration (SBA) of a certificate of competency (COC). The protester also objects to the preaward survey team's (1) unsatisfactory financial rating of HL, and (2) conclusion that late delivery under a prior contract was HL's fault. Further, HL states that, in another recent preaward survey, it was found responsible.

HL's correspondence indicates that the Army's nonresponsible determination was based on the negative preaward survey. Thereafter, the matter was referred to SBA for possible issuance of a COC. HL's correspondence also indicates that it fully participated in the SBA review and it managed to eliminate all of the negative conclusions of the preaward survey. However, in accord with SBA Standard Operating Procedure 60 04-1 and 13 C.F.R. § 124.8-16(f) (1979), the SBA declined to issue a COC on the ground that HL was not eligible for one "since they are not performing a significant portion of the procurement with their own facilities and personnel."

The COC requirement stems from the statutory protection afforded small businesses. 15 U.S.C. § 637(b)(7) (1976 and Supp. I, 1977). Whenever a

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contracting officer makes a nonresponsibility determination with respect to a small business he must refer the matter to the SBA, which has conclusive authority to decide the question by issuing or denying a COC. Brimstone Equipment Co., B-195344, August 7, 1979, 79-2 CPD 95.

SBA's denial of the COC is an affirmation of the contracting officer's determination that HL is non-responsible. We will not question a contracting officer's determination that a small business concern is nonresponsible where, as here, that determination has been affirmed by SBA after the small business concern has been provided an opportunity to respond to the "deficiencies" in the preaward survey. Digital General Corporation, B-194547, April 26, 1979, 79-1 CPD 291.

While there is an exception to our review of SBA determinations where there is a prima facie showing of fraud or that information vital to the responsibility determination was willfully disregarded, thus implying bad faith (Old Hickory Services, B-192906.2, February 9, 1979, 79-1 CPD 92; Peoples Medi-Car, Inc., B-196429, January 31, 1980, 80-1 CPD 85), no such showing has been made in this case.

Accordingly, based on HL's submissions and documents provided by the Army, there is no basis for our Office to consider the matter and the protest is dismissed.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel