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DECISION



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

[Protest Against Determination of Nonresponsibility]

FILE: B-199877

DATE: September 30, 1980

MATTER OF: B&W Construction Corporation

DIGEST:

GAO will not review determination of non-responsibility of small business bidder absent prima facie showing of fraud or willful disregard of facts, where such determination was referred to and concurred in by Small Business Administration (SBA) since disposition of SBA with regard to such matters is final.

B&W Construction Corporation (B&W) protests the rejection of its low bid under invitation for bids No. N62472-79-B-0052, issued by the Naval Facilities Engineering Command, Philadelphia, Pennsylvania, as a 100 percent small business set-aside. The procurement is for improvements to the Reaction Force Facility, Naval Weapons Station, Earle, Colts Neck, New Jersey.

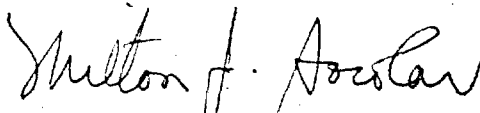
B&W was determined nonresponsible by the Navy on the basis of a preaward survey. The matter was forwarded to the regional office of the Small Business Administration (SBA). Based on an analysis of available information, SBA's acting Regional Administrator declined to issue a certificate of competency (COC). After notification of the SBA's action, the Navy awarded the contract to the second low bidder, prior to our resolution of the protest, as permitted by Defense Acquisition Regulation (DAR) § 2-407.8(b)(3) (1976 ed.). This action was undertaken after the Navy determined that failure to make a prompt award would delay its ability to make timely use of the facility and would adversely affect its occupants.

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B&W alleges that it was unfairly determined nonresponsible due to misrepresentations of certain Navy personnel to both their superiors and the SBA. B&W requests that we independently review its performance under prior contracts.

When an agency determines that a small business bidder is nonresponsible, the law requires that the matter be referred to the SBA, which conclusively determines the bidder's responsibility by issuing or declining to issue a COC. 15 U.S.C. 637(b)(7) (Supp. I 1977). This Office has no authority to review SBA's determination to require issuance of a COC, or to reopen a case where a COC has been denied unless the protester has made a prima facie showing of fraud or willful disregard of facts, Ken Com, Inc., B-195845, April 24, 1980, 59 Comp. Gen. , 80-1 CPD 294; neither, under our Bid Protest Procedures, 4 C.F.R. Part 20 (1980), do we generally conduct independent investigations to establish the validity of a protester's statements. M & H Mfg. Co., Inc., B-191950, August 18, 1978, 78-2 CPD 129. Here, the actions of both the Navy and the SBA appear to be consistent with their responsibilities, and B&W has offered nothing of substance to support its allegations of improper action. Under the circumstances, we find no basis for considering the matter further.

The protest is dismissed.



Milton J. Gocolar
General Counsel