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DECISION



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

FILE: B-202699

DATE: April 22, 1981

MATTER OF: Westco Inc.

DIGEST:

[Protest Alleging]

Allegation that low bidder on small business set-aside cannot perform contract and will subcontract it to large business is not for review by GAO. GAO generally will not review affirmative determination of responsibility, and if responsibility determination is negative, matter must be referred to Small Business Administration which has exclusive authority to make final determination.

Westco Inc., protests the award of a contract to the low bidder, Maya Construction Company (Maya), under invitation for bids (IFB) F02601-81-B0020 issued by the Department of the Air Force. The solicitation is a total small business set-aside for repair of the runway at Davis-Monthan Air Force Base. Westco asserts that Maya is not capable of performing the contract and that if Maya is awarded the contract it will subcontract the work to a large business.

The allegation concerning Maya's capability relates to its responsibility as a prospective contractor. If the contracting agency finds that Maya is not responsible as urged by the protester, the matter must be referred to the Small Business Administration which, under the provisions of the Small Business Act, 15 U.S.C. § 637(b) (7) (Supp. I 1977), and § 1-705.4(a) of the Defense Acquisition Regulation (1976 ed.), has the exclusive authority to make the final and dispositive determination regarding all elements of responsibility of a small business concern. D. P. Associates, Inc., B-197947, April 28, 1980, 80-1 CPD 302. To be eligible for a COC, a small business must perform a significant portion of the contract with its own facilities and personnel. 13 C.F.R. 125.5(f) (1980).

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Thus, if the agency finds Maya to be nonresponsible, SBA will consider the extent of Maya's ability to perform the contract in its own right. SBA's decision generally is not reviewable by GAO. Uniflite, Inc., B-197365, January 23, 1980, 80-1 CPD 67. On the other hand, if the agency finds Maya to be responsible, such an affirmative finding of responsibility would not be subject to GAO review absent a showing of fraud on the part of the contracting officer or the misapplication of definitive responsibility criteria, neither of which is present in this protest. Colorado Research and Production Laboratory, Inc., B-199755, March 5, 1981, 81-1 CPD ____.

This Office, therefore, will not consider a protest based on speculation that a potential prime contractor for a total small business set-aside construction contract may intend to subcontract some portion of the work to a large business.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel