



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sterling Medical Associates

File: B-227005

Date: June 4, 1987

DIGEST

Where contracting officer's improper rejection of low small business offeror as nonresponsible without referring the matter to the Small Business Administration for certificate of competency consideration is cured by subsequent referral to SBA, protest is moot and need not be considered, as SBA has conclusive authority to determine a small business' responsibility.

DECISION

Sterling Medical Associates (SMA), a small business, protests award of a contract to Dr. Ronald Cain under request for proposals (RFP) No. 243-RFP-87-0011, issued by Alaska Area Native Health Service, Department of Health & Human Services (HHS), for radiology support services. SMA, the low offeror under the RFP, protests HHS's determination that the firm was nonresponsible. We dismiss the protest.

The HHS contracting officer found SMA nonresponsible because of prior unsatisfactory performance. Acting under the belief that SMA was a large business, the contracting officer did not refer the issue of SMA's nonresponsibility to the Small Business Administration (SBA). SMA then protested to our Office, contending that its past performance was satisfactory. As a result of facts presented at the bid protest conference, HHS conducted an investigation and determined that the contracting officer should have referred the nonresponsibility determination to the SBA under the certificate of competency (COC) procedures. HHS reports that it is now referring the matter to SBA for COC consideration.

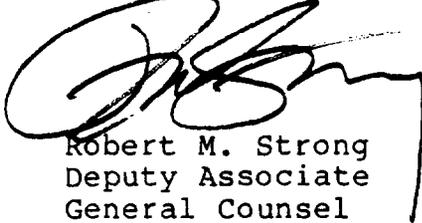
The SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b) (1982); Federal Acquisition

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Regulation (FAR), 48 C.F.R. subpart 19.6 (1986). We have held that where a contracting officer's improper rejection of a low small business offeror as nonresponsible without referring the matter to SBA for COC consideration is cured by subsequent referral to SBA, the protest is moot and need not be considered. See Building Maintenance Specialists, B-220966, Jan. 14, 1986, 86-1 C.P.D. ¶ 39. By its referral of SMA's responsibility to SBA subsequent to SMA's protest, HHS has cured its impropriety, and we will not consider the protest.

Sterling comments that it will be prejudiced by the COC process at this time, since its intended subcontractor physicians have been committed for service elsewhere, and that there is no regulatory authority for SBA's postaward COC consideration. Until SBA reviews the matter, however, these issues are premature and not for our consideration. See Telex Communications, Inc., B-222760, June 25, 1986, 86-2 C.P.D. ¶ 8.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel