

Shanks



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: LD Research Corporation  
File: B-230912  
Date: June 20, 1988

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### DIGEST

Protest that a negotiated contract was improperly awarded at a higher price than that offered by protester is dismissed since contracting agency determined protester to be nonresponsible, and that matter is not challenged in the subject protest.

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### DECISION

LD Research Corporation (LDR) protests the award of a contract under request for proposals (RFP) No. DAJB03-87-R-3928, issued by the Department of the Army for food service operation of the United States Army dining facilities in Korea.

We dismiss the protest.

LDR contends that the agency improperly awarded the contract at a price higher than that which it proposed, even though its offer was apparently technically acceptable since the agency requested that it submit a best and final offer (BAFO). The protester infers that the Army found it to be responsible since the agency did not refer the matter of its responsibility to the Small Business Administration (SBA) for a determination. On these grounds, LDR alleges that the Army failed to make award in accordance with the evaluation criteria set forth in the RFP.

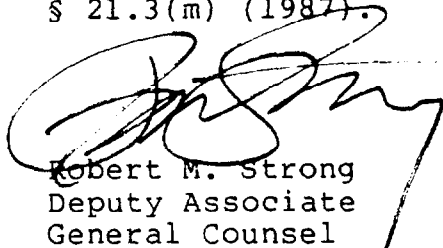
In its response to the protest, however, the Army states that LDR in fact was determined to be nonresponsible after submission of BAFOs. This determination appears to have been based in large part on LDR's failure to rectify the preaward survey finding that its corporate financial capability was insufficient to meet the working capital requirements of the proposed contract along with its

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then-current business obligations. The agency further explains that its nonresponsibility determination was not required to be referred to the SBA because the acquisition regulations implementing the Small Business Act (15 U.S.C. § 631, et seq., which are set forth in the Federal Acquisition Regulation, and include the requirements for referral of nonresponsibility determinations by contracting officers to the SBA), are not applicable here since the requirement is to be performed outside the territorial regions to which the provisions apply. 48 C.F.R. § 19.000(b) (1987).

LDR apparently was not aware that the agency had found it to be nonresponsible at the time it filed this protest and, thus, did not challenge the agency's nonresponsibility determination. We note, however, that subsequent to the filing of this protest, when LDR learned of the agency's negative determination of responsibility and the basis thereof, it filed a separate protest of that determination.1/

In light of the fact that LDR was determined to be nonresponsible and that the protester's challenge of that determination is not for consideration here, this protest raises no viable legal objection to the award of the contract. The protest is, therefore, dismissed. 4 C.F.R. § 21.3(m) (1987).



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1/That later-filed protest will be considered separately from this case.