



The Comptroller General
of the United States

Washington, D.C. 20548

Judge
136276

Decision

Matter of: Logistics Movers, Ltd.

File: B-231481

Date: July 7, 1988

DIGEST

General Accounting Office dismisses protest by low bidder that it should have been awarded a contract where the protester, a small business concern, is determined to be nonresponsible by the contracting agency and the matter of the protester's responsibility has been referred to the Small Business Administration (SBA), for possible issuance of a certificate of competency, because SBA's authority in this regard is conclusive.

DECISION

Logistics Movers, Ltd., protests the failure of the Department of State (DOS) to award it a service contract under solicitation No. 8660-800008. We dismiss the protest.

At the time this solicitation was issued, Logistics was performing these services for DOS under a contract which was due to expire on May 7, 1988. Bids were opened on April 5, and Logistics was the apparent low bidder. DOS, however, faced with a continuing need for these services yet concerned about Logistics' responsibility, on May 8 awarded Ogden Allied Building Services Corporation an interim 13-week contract. Logistics filed its protest with us on May 18, contending that it, as the low bidder, should be awarded the contract. In response, the head of DOS's contracting activity made a determination that urgent and compelling circumstances existed that required the continued performance of the protested contract.

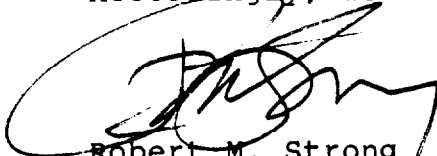
On June 15, the DOS contracting officer determined that Logistics was nonresponsible and that Logistics' bid submitted in response to the solicitation should be rejected. The contracting officer then referred the matter to the Small Business Administration (SBA) for review in accordance with SBA's certificate of competency (COC) procedures. DOS, therefore, requests that we dismiss the

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protest pursuant to 4 C.F.R. § 21.3(m)(3) (1988) of our Bid Protest Regulations.

In order for a bidder to be eligible to receive an award, it must be determined to be responsible. Federal Acquisition Regulation § 9.103. When an agency makes a determination that a small business concern is nonresponsible, it is required by law to refer that determination to the SBA for consideration under its COC procedures, as DOS has done. The SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and SBA's determination to issue or refuse to issue a COC is conclusive with respect to all aspects of a small business concern's responsibility. 15 U.S.C. § 637(b)(7) (1982). The burden is on the small business to apply for a COC from the SBA in order to avail itself of the protection afforded against unreasonable determinations by the contracting officer. Zan Machine Co., Inc., B-229705.2, Jan. 19, 1988, 88-1 CPD ¶ 50. Since the SBA's jurisdiction over these matters under its COC procedures is conclusive, we will not review an agency's determination that a small business is not responsible. Id.

Accordingly, we dismiss the protest.



Robert M. Strong
Deputy Associate
General Counsel