



Comptroller General
of the United States

Washington, D.C. 20548

Ayer

Decision

Matter of: Pittman Mechanical Contractors, Inc.

File: B-242242; B-242243

Date: December 11, 1990

David A. Hearne, Esq., Outland, Gray, O'Keefe & Hubbard, for the protester.

Roger H. Ayer, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests of agency's negative determinations of protester's responsibility are dismissed where protester unsuccessfully availed itself of Small Business Administration (SBA) certificate of competency (COC) procedures and protester does not allege fraudulent or bad faith actions by SBA in the consideration of its COC applications.

DECISION

Pittman Mechanical Contractors, Inc. protests the Department of the Navy's negative determination of Pittman's responsibility under invitations for bid (IFB) Nos. N62470-85-B-7757 for replacement of air handling units, and N62470-87-B-8716 for installation of unit heaters.

We dismiss the protests.

Except in the limited circumstances stated below, we will not question a responsibility determination where the contractor found nonresponsible avails itself of the certificate of competency (COC) procedure established for small businesses, and the Small Business Administration (SBA) declines to issue a COC.

When a small business firm is determined to be nonresponsible by a contracting officer, that contracting officer must refer the matter to the SBA for consideration of issuance of a COC. 15 U.S.C. § 637(b)(7) (1988). After the referral has been made it is incumbent upon the small business to file a complete and acceptable COC application with the SBA in order

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to avail itself of the potential protection provided by statute against unreasonable or bad faith determinations of nonresponsibility. Commerce Funding Corp., B-236114, Oct. 2, 1989, 89-2 CPD ¶ 287.

The Small Business Act, 15 U.S.C. § 637(b)(7), gives the SBA, not our Office, the conclusive authority to review a contracting officer's determination that a small business is not responsible. Our Office limits review of the denial of a COC to instances in which the protester's submission indicates that SBA action on a referral may have been taken fraudulently or in bad faith or that the SBA failed to consider vital information bearing on the protester's responsibility. Spheres Co., B-225755, June 5, 1987, 87-1 CPD ¶ 573. None of these circumstances are alleged to be present here.

The protests are dismissed.

A handwritten signature in cursive script, reading "James A. Spangenberg".

James A. Spangenberg
Assistant General Counsel