



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comark Ventures, Inc.

File: B-256797

Date: April 21, 1994

DECISION

Comark Ventures, Inc. protests the award of a contract to any other bidder under Department of the Army invitation for bids No. DACW39-94-B-0011, issued as a small business set-aside. The protester contends that the proposed awardee will not comply with the solicitation requirement that the awardee perform 50 percent of the work with its own employees. See Federal Acquisition Regulation § 52.219-4(b)(2).

We dismiss the protest because it concerns a matter of responsibility of a small business concern, that is, whether the prospective awardee is able to comply with the 50 percent requirement. We generally will not review an affirmative determination of an offeror's responsibility. 4 C.F.R. § 21.3(m)(5). Similarly, when a small business firm is determined to be nonresponsible, the contracting officer must refer the matter to the Small Business Administration (SBA). The Small Business Act, 15 U.S.C. § 637(b)(7) (1988), gives the SBA exclusive authority to finally determine the responsibility of a small business; our Office generally does not review either the contracting officer's decision¹ to refer a responsibility question to the SBA, or the SBA's decision to issue or deny a COC. See 4 C.F.R. § 21.3(m)(3); MRL, Inc.--Request for Recon., B-235673.4, Aug. 23, 1989, 89-2 CPD ¶ 188.

The protest is dismissed.

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¹We note that the agency has advised our Office that "it appears that [the proposed awardee] will not comply with the requirement," and that it therefore will forward the matter to the SBA for a Certificate of Competency (COC) determination.