



# Decision

**Matter of:** Language Arts, Inc.  
**File:** B-259489; B-259489.3  
**Date:** February 14, 1995

## DECISION

Language Arts, Inc. protests the Drug Enforcement Administration's (DEA) award of a contract for translation and transcription services to Betty Munoz Consulting, Ltd. (BMC) pursuant to solicitation No. DEA-93-R-0020, which was issued as a total small business set-aside. We dismiss the protest.

In its initial protest letter, Language Arts alleged that BMC has an unsatisfactory record regarding integrity and business ethics and, therefore, the contracting officer should have determined BMC to be nonresponsible and ineligible for contract award.<sup>1</sup> Subsequently, Language Arts amended its protest alleging that BMC is not a small business eligible for award of this contract and that the contracting officer acted in bad faith when he did not refer the matter of BMC's responsibility to the Small Business Administration (SBA) for a certificate of competency (COC) determination.

An agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m) (5) (1994); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Here, Language Arts is not alleging that definitive responsibility criteria have been misapplied but is asserting that the contracting officer acted in bad faith. Language Arts states that Betty Munoz, the owner of BMC, was named as a defendant in an action

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<sup>1</sup>Language Arts also alleged that the agency misevaluated offerors' proposals and did not conduct meaningful discussions. The agency responded to the allegations in its protest report, but Language Arts did not address the issues further in its comments on the report. Therefore, we consider these protest grounds to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

filed in the United States District Court for the District of New Jersey by former DEA agents alleging, among other things, violations of their civil rights.<sup>2</sup> Language Arts contends that the contracting officer knew of the lawsuit and, therefore, was required to find BMC nonresponsible and refer the matter to SBA under its COC procedures.

We do not agree that the filing of a civil lawsuit against Betty Munoz required a finding that BMC was nonresponsible and a referral to the SBA under its COC program. In this regard, in appropriate circumstances, we have upheld contracting officers' affirmative determinations of responsibility even where the offerors have previously been convicted of criminal activities. See Universal Technologies, Inc.; Spacecraft, Inc., B-248808.2 et al., Sept. 28, 1992, 92-2 CPD ¶ 212, and cases cited; see also Pearl Properties; DNL Properties, Inc., B-253614.6; B-253614.7, May 23, 1994, 94-1 CPD ¶ 357. Specifically, we simply do not believe that the protester's allegation--the contracting officer's apparent disregard of the pending lawsuit--shows the likelihood that the contracting officer acted in bad faith in finding BMC responsible.

Regarding Language Arts contention that BMC is not a small business, our Office has no jurisdiction to review size determinations. The Small Business Act, 15 U.S.C. § 637(b)(6) (1988), gives the SBA, not our Office, the conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.3(m)(2); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71. Thus, we will not review a protester's challenge to another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of conducting federal procurements. Survive Eng'g Co., supra; Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. Here, the SBA issued a decision that BMC is a small business for purposes of this procurement on December 15, 1994.

The protest is dismissed.



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<sup>2</sup>Civil Action No. 94-2363, filed May 18, 1994.