



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Applied Companies--Reconsideration

File: B-240185.3, B-240212.3

Date: September 13, 1990

Kent L. Fortin for the protester.
Maj. William R. Medsger and Carol P. Rosenbaum, Esq.,
Department of the Army, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

The General Accounting Office will not review a contracting agency's determinations that a small business is nonresponsible, or the agency's alleged failure to furnish the Small Business Administration (SBA) current information regarding the firm's responsibility where the protester had the opportunity to present this information before the SBA under the certificate of competency program.

DECISION

Applied Companies requests reconsideration of our August 15, 1990, dismissals of its protests of the awards under request for proposals (RFP) Nos. DAAK01-89-R-0143 and DAAK01-89-R-0138, issued by the United States Army Troop Support Command for air conditioners.

We affirm our dismissals.

The Army found Applied, a small business concern, non-responsible because of unsatisfactory production capability and poor past and present performance on other government contracts. The agency referred the matter of Applied's responsibility to the Small Business Administration (SBA) as part of SBA's certificate of competency (COC) program under

049481/142228

section 8(b)(7) of the Small Business Act, 15 U.S.C. § 637(b)(7) (1988). SBA invited Applied to apply for a COC. The SBA also informed Applied of the bases of the agency's nonresponsibility determination--

"Your firm's production capability was rated unsatisfactory during a recent Pre-Award Survey conducted by DCASMA - Van Nuys.

Your firm's poor past and present performance on Government contracts."

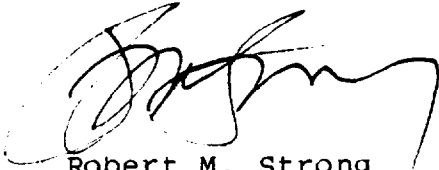
SBA's letter emphasized that Applied had to prove its competency to SBA. After receiving Applied's COC application, SBA reviewed it and declined to issue a COC.

Applied protested its rejection to our Office with general allegations that the agency gave SBA incorrect information regarding Applied's prior and current contract performance and that the SBA misconstrued this information. We dismissed Applied's protests because we generally do not review contracting agencies' small business nonresponsibility determinations that have been referred to the SBA for consideration and decision, nor do we review SBA's COC decisions, absent a showing of possible fraud or bad faith or that vital information should have been but was not considered. 4 C.F.R. § 21.3(m)(3) (1990).

On reconsideration, Applied states that it is not protesting the judgment of SBA in finding it nonresponsible, "given the information they were furnished as a basis for their decision." Instead, Applied discusses four government contracts in which Applied encountered performance difficulties, and explains that the problems were inherent in the complex design and testing requirements of the contracts and that Applied was not at fault for performance delays.

Applied admits that fraud is not in issue, and only contends that "the facts are such that bad faith of government officials is possible." However, speculation does not constitute evidence of bad faith. Moreover, there is no indication that SBA's denial of the COC resulted from a failure to consider vital information. In this regard, it is clear Applied knew what areas of concern over its responsibility were at issue and had an opportunity to respond to those concerns during the COC proceedings. Nothing more is required under the COC procedures. Tri Rivers Ambulance; Perman Ambulance Serv. Inc., B-190326, Apr. 18, 1978, 78-1 CPD ¶ 299; see also, Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132.

Because Applied has not specified any factual or legal basis warranting reversal or modification of the dismissal of its protests, the dismissals are affirmed.

A handwritten signature in black ink, appearing to read 'R. M. Strong', with a large, sweeping flourish extending to the right.

Robert M. Strong
Associate General Counsel