

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221828; B-221829; **DATE:** April 24, 1986
B-221830

MATTER OF: Darian Industries, Inc.

DIGEST:

Negative responsibility determination of small business concern is upheld where the protester elects not to file an application for a certificate of competency with the Small Business Administration.

Dairan Industries (Darian) protests the rejection of its bids under invitation for bids (IFB) Nos. DLA100-85-B-1087, -1128, and -1227, issued by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania, on the basis that Darian is a nonresponsible bidder.

We deny the protest.

The IFB's were issued as total small business set-asides for various garrison caps. Darian was the low bidder on each IFB; however, the preaward surveys recommended no awards because Darian failed to provide evidence of financial capability. DPSC found Darian nonresponsible and, by letter dated December 17, 1985, referred the determination to the Small Business Administration (SBA) so that it could consider issuing a certificate of competency (COC). Darian did not file for a COC; consequently, the SBA closed its file on the matter on January 10, 1986.

Darian contends that the preaward surveys contained numerous mistakes and, therefore, are void and without a reasonable basis. Darian alleges that the surveys mis-designate stockholders and contain a major accounting error in not including certain loans as an asset of the company. These and other actions are cited by Darian as indicating bad faith on the part of agency officials in the nonresponsibility determination. Also, Darian alleges that DPSC did not respond to its Freedom of Information Act (FOIA) request for copies of the preaward surveys until after the time had expired for filing its COC application.

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B-221828; B-221829;
B-221830

We have held that the small business firm contesting a negative responsibility determination is responsible for filing a complete and acceptable COC application with SBA in order to avail itself of the possible protection provided by statute against unreasonable or bad faith determinations of responsibility. The SBA has conclusive authority to determine the responsibility of small businesses by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7) (1982). Where a firm does not file for a COC, as here, we do not review the agency's determination of nonresponsibility since such action, in effect, would be substituting our Office for the agency specifically authorized by statute to review the determination. See L. A. Spievak Corp., B-216535, Nov. 26, 1984, 84-2 C.P.D. ¶ 556.

Regarding the release of the preaward surveys, DPSC responds that the entire process of handling Darian's FOIA request took only 12 working days; further, that the surveys were forwarded to the SBA as part of the COC referral package and that Darian could have obtained the documents from the SBA. However, Darian contends that SBA was not under a duty to release information not generated by its agency.

In our view, the failure of DPSC to provide copies of the preaward surveys should not have hindered Darian's ability to file for a COC because it generally was on notice that it had been found to lack financial capability. The record also shows that the day before Darian had to file with SBA, Darian's counsel was advised by the agency that the documents were ready for release and could be picked up. Apparently, Darian elected not to pick up the documents or take other action prior to expiration of the cutoff date. The regulations do not contemplate that preaward survey results will be made available to bidders before award to permit contesting a nonresponsibility determination. See Camel Manufacturing Company--Request for Reconsideration, B-218473.4, Sept. 24, 1985, 85-2 C.P.D. ¶ 327. Thus, DPSC was not required to turn the preaward surveys over to Darian before award for use in the COC procedure.

The protest is denied.

for Seymour Efron
Harry R. Van Cleave
General Counsel