



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Holiday Inn North Raleigh

File: B-276389.2

Date: July 8, 1997

Herbert C. Ross for the protester.

Col. Nicholas P. Retson and Maj. Michael J. O'Farrell, Jr., Department of the Army, for the agency.

Ray E. Baker, Sunrise International Group, Inc., for the intervenor.

Jennifer Westfall-McGrail, Esq., and Christine Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that Small Business Administration (SBA) improperly failed to consider vital information bearing on awardee's status as a small business in connection with deciding whether the awardee was eligible for the Certificate of Competency program is dismissed since protest essentially involves the issue of what information should be considered by SBA and challenges SBA's determination of the awardee's size status, matters within SBA's exclusive statutory authority to determine small business size status and not for review under General Accounting Office Bid Protest Regulations.

DECISION

The Holiday Inn North Raleigh protests the award of a contract to Sunrise International Group under invitation for bids (IFB) No. DABT23-97-B-0031, issued by the Department of the Army for meals, lodging, and transportation for military applicants being processed at the Military Entrance Processing Station in Raleigh, North Carolina. Sunrise, a small business which had initially been rejected as nonresponsible, was awarded the contract after the Small Business Administration (SBA) issued it a Certificate of Competency (COC). Holiday Inn contends that SBA should not have considered Sunrise eligible for a COC because Sunrise does not qualify as a small business for purposes of this procurement due to its relationship with two large business subcontractors. According to the protester, Sunrise improperly failed to disclose its "affiliation" with its large business subcontractors, and SBA failed to consider the impact of Sunrise's proposed subcontracting arrangements in deciding whether Sunrise qualified as a small business eligible for a COC.

We dismiss the protest because the protester is in effect challenging the size status of Sunrise, which is not a matter for our review.

Under 15 U.S.C. § 637(b)(6) (1994), SBA has conclusive authority to determine matters of size status for federal procurement purposes. Consequently, our Office will neither make nor review size status determinations. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (1997); Independent Metal Strap Co., Inc., B-240033.3, Dec. 12, 1990, 90-2 CPD ¶ 481 at 3. The protest here essentially involves the issue of whether SBA based its size determination on the proper information, with the protester arguing that Sunrise's subcontracting arrangement meant that Sunrise could not be properly be considered a small business for purposes of this procurement. The question of what information must be considered by SBA in making a size determination is inextricably linked to the size determination itself; thus, SBA's authority, to be conclusive in this area, must encompass the determination of what information is to be considered. Accordingly, this issue, and the issue of whether Sunrise qualifies as a small business for purposes of this procurement, are not for our review. CSR, Inc., B-260955, Aug. 7, 1995, 95-2 CPD ¶ 59 at 5; Wesley Medical Resources, Inc., B-257677, Aug. 17, 1994, 94-2 CPD ¶ 75 at 3.

Citing section 21.5(b)(2) of our Bid Protest Regulations, the protester contends that it is appropriate for us to review the protest since it is based on the allegation that SBA improperly failed to consider vital information bearing on Sunrise's responsibility--namely, the extent of its subcontracting arrangements. The protester's position reflects a misunderstanding of our Regulations. While we will review SBA's decision whether to issue a COC under certain circumstances, including where there is a showing of failure to consider vital information bearing on the firm's responsibility, 4 C.F.R. § 21.5(b)(2), the "vital information" exception does not apply where, as here, the protest relates to the SBA's determination as to the size status of the challenged firm. Rather, as noted above, in recognition of the conclusive statutory authority vested in SBA over size status issues, our Regulations state that we will not review challenges to the size status of particular firms. 4 C.F.R. § 21.5(b)(1); Wesley Medical Resources, Inc., supra.

The protest is dismissed.

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