

PK-4

DECISION



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

FILE: B-194009

DATE: July 24, 1979

MATTER OF: SMI/New York; Sweepster, Inc.

[Protest of Refusal by SBA to Issue Certificate of Competency]
DIGEST:

10,819

DLB 02226

Under 15 U.S.C. § 637(b)(7), Small Business Administration (SBA) has authority to issue or deny certificate of competency (COC) and GAO generally will not review SBA determination, absent prima facie showing of fraud or willful disregard of facts.

DLB 02227

Sweepster, Inc., (Sweepster) protests the refusal of the Small Business Administration (SBA) to issue it a certificate of competency (COC) in connection with invitation for bids (IFB) DLA 700-79-B-0078, a small business set-aside, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA).

Previously SMI/New York, a Division of Caelter Industries, Inc., (SMI), the second low bidder, protested any award to Sweepster on the basis that Sweepster would not furnish a "commercial product of the manufacturer's latest design" as required by the specifications.

This allegation of nonresponsibility was concurred in by the contracting officer and, as required, he referred the matter to the Small Business Administration (SBA). SBA also determined that Sweepster would not be able to comply with that specification provision and declined to issue a (COC).

The SBA in essence affirmed the contracting officer's conclusion that Sweepster's latest design of its commercial product could not meet the specification requirements without modifications. Since the item had not been commercially marketed with these modifications, the using agency (the Air Force) objected to the purchase of

Bidder responsibility
Contract award protests
Certificates of competency
Bidder eligibility
Bid specifications
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the item, foreseeing problems with reliability, and adequacy of technical data and parts support. Sweepster contends that the changes to be made to its product were more in the nature of "customer options" than "modifications", that the Air Force's apprehensions are unfounded, and that the SBA improperly declined to issue the COC because it did not correctly interpret specification requirements.

The SBA has the authority to make final disposition of questions concerning the responsibility of a small business concern to receive and perform a specific Government contract. 15 U.S.C. § 637(b)(7) (1976), as amended by Pub.L. 95-89, § 501, 91 Stat. 561, August 4, 1977. Our Office generally will not review such SBA determinations unless the protester has made a prima facie showing of fraud or willful disregard of facts. Old Hickory Services, B-192906.2, February 9, 1979, 79-1 CPD 92; See also Specialty Tools, Inc., B-193980, April 15, 1979, 79-1 CPD 239; Semco, Inc., B-192623, August 28, 1978, 78-2 CPD 147. While we have requested SBA to reopen a case where information materially affecting the determination of nonresponsibility was not taken into consideration, here it appears SBA was fully aware of all the relevant facts. Cf. Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31.

Accordingly, the Sweepster protest is dismissed. SMI's protest is dismissed as moot.



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General Counsel