

11937 D. Klemm  
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**DECISION**

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

FILE: B-195928

DATE: November 5, 1979

MATTER OF: Gibraltar Industries, Inc.

*[Protest Concerning Size Status and Responsibility of Awardee]*  
DIGEST:

1. Where contracting officer has determined small business bidder to be nonresponsible and has referred matter to Small Business Administration (SBA) for possible issuance of COC, our Office does not review SBA determinations, absent prima facie showing of fraud or willful disregard of facts, since SBA has statutory authority to conclusively determine responsibility of small business bidder.
2. Question concerning small business size status of bidder is not for consideration by GAO since exclusive authority over such question is vested by statute in SBA.

The Defense Logistics Agency (DLA) issued invitation for bids (IFB) DLA100-79-B-0632 for the procurement of lightweight polyurethane ponchos. The procurement was set aside for small business. Bids were opened on August 23, 1979, with Cecile Industries, Inc. (Cecile), being the low bidder. Gibraltar Industries, Inc. (Gibraltar), the next low bidder, protests as follows:

*ACC 328  
DLG 87  
CNG 630*

1. Cecile is nonresponsible.
2. Cecile is affiliated with a large business and, therefore, other than a small business.

Concerning Gibraltar's first basis of protest, the contracting officer has determined that Cecile was nonresponsible. Our Office has been advised that this matter has been forwarded to the Small Business Administration (SBA) for its review and for the possible issuance of a certificate of competency (COC).

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*~~Bidder~~ Certificates of Competency Small business set-aside*  
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The final determination as to whether a small business bidder is responsible for a particular procurement is made by the SBA under its COC procedures. See 15 U.S.C. § 637(b)(7) (1976 and Supp. I 1977). Our Office does not review such SBA determinations, unless the protester makes a prima facie showing of fraud or willful disregard of facts. Old Hickory Service, B-192906.2, February 9, 1979, 79-1 CPD 92. We understand that SBA has not yet made a determination.

The second basis of protest questions the size status of the low bidder. We understand that SBA has found Cecile to be a small business. Under 15 U.S.C. § 637(b)(6) (1976), the SBA has been given exclusive authority to determine matters of small business size status for procurement purposes. Therefore, our Office will not review questions of a bidder's small business size status. Sunshine Peninsula, Inc., B-184294, July 14, 1975, 75-2 CPD 33.

Accordingly, the protest is dismissed.



Milton J. Socolar  
General Counsel