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DECISION



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

[Protest of SBA Refusal to Issue COC]

FILE: B-199017

DATE: September 3, 1980

MATTER OF: Tamsco, Inc.

DIGEST:

GAO does not review Small Business Administration's refusal to issue certificate of competency absent showing of fraud or bad faith.

Tamsco, Inc. *[*protests the refusal by the Small Business Administration (SBA) to issue the firm a Certificate of Competency *]* (COC) in connection with invitation for bids DAAE07-80-B-7288 issued by the Department of the Army to procure bearing and seal kits.

*[*The Army found Tamsco to be nonresponsible on the basis of a preaward survey which indicated that Tamsco did not have adequate control over the inspection requirement of the procurement. The matter then was referred to the SBA for COC consideration. The COC was denied primarily because in the SBA's view Tamsco could not meet the invitation's delivery requirement; however, the SBA letter to Tamsco indicated that only 17 percent of the bid price reflected work to be done by Tamsco itself (most of the work was to be subcontracted) and that to be eligible for a COC a small business must perform a significant portion of the contract, measured in dollar value, with its own facilities and personnel. *]* See 13 C.F.R. § 125.5(e) (1980).

*[*Tamsco contends that it in fact can meet the delivery requirement. Tamsco also argues that SBA's eligibility requirement establishes an improper limitation *] on the Congressional direction in the Small Business Act, 15 U.S.C. § 631 et seq. (1976), [that the Federal Government further the interests of small business concerns.]*

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[The SBA has the authority] under 15 U.S.C. § 637(b)(7) (Supp. I 1977) [to conclusively certify all elements of a small business firm's responsibility. Our Office does not review the SBA's denial of a COC absent a showing of fraud or such willful disregard of the facts as to imply bad faith.] Old Hickory Services, B-192906.2, February 9, 1979, 79-1 CPD 92. [No such showing has been made here.] The record shows only that the SBA considered the matter and concluded that it could not issue a COC because it doubted that Tamsco could meet the delivery requirements. While the protester asserts that this conclusion by SBA is incorrect because it is based on an erroneous belief that the production time for each of two parts that make up the seal assembly will run consecutively, instead of concurrently, the narrative report prepared by SBA's Industrial Specialist appears to indicate that consecutive, rather than concurrent, production steps are necessary. In any event, even [if SBA did err in this regard, it does not appear, nor is it alleged, that such an error is the result of bad faith or gross disregard of the facts.]

Moreover, [although the SBA letter to Tamsco referred to Tamsco's intention to perform only 17 percent of the contract requirements, the minutes of SBA's Regional COC Committee reflect that the COC denial was based on lack of capacity rather than ineligibility under the SBA regulation. Thus, under these circumstances, we need not consider the protester's argument regarding the validity of the eligibility requirement and, fraud or bad faith not having been shown, we dismiss the protest.] See Solarex Mfg. Co., Inc., B-193664, January 22, 1979, 79-1 CPD 42.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel