

Alkon PLG

17222

**DECISION**



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

*Protest Alleging That Awardee Was Nonresponsible*

FILE: B-202043

DATE: March 4, 1981

MATTER OF: Micrographics International, Inc.

**DIGEST:**

Protest that Small Business Administration (SBA) should not have issued Certificate of Competency (COC) because bidder did not meet definitive responsibility criterion in solicitation will not be considered by GAO since COC decisions are not reviewed by GAO absent showing of fraud or bad faith. Since SBA is not bound by solicitation conditions in deciding to issue COC, fact that bidder does not meet responsibility criterion does not suggest COC decision resulted from fraud or bad faith.

Micrographics International, Inc. (Micrographics) protests the award of a contract by the Department of the Navy under solicitation No. N00383-80-B-0523 to Microtech Industries, Inc. (Microtech). Micrographics claims that the awardee was nonresponsible and that the Small Business Administration (SBA) erroneously granted it a Certificate of Competency (COC) because Microtech allegedly did not comply with a definitive responsibility criterion in the solicitation requiring the bidder to "presently possess" on site several specified items of equipment.

By law SBA's COC determinations are conclusive. 15 U.S.C. § 637(b)(7) (Supp. I 1977). Therefore, our Office generally will not review SBA's decisions to award a COC absent a prima facie showing of fraud on the part of Government officials or such willful disregard of facts as to imply bad faith. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322; Dyneteria, Inc., 55 Comp. Gen. 97 (1975), 75-2 CPD 36. Although the protester's concern is that SBA issued a COC notwithstanding the bidder's

~~015805~~ 114507

failure to comply with a definitive responsibility criterion in the solicitation, we have recognized that the SBA, in deciding whether to issue a COC, is not bound by the "conditions stated" in the invitation and that bidder compliance with definitive criteria therefore is not a legal prerequisite to the issuance of a COC. Baxter & Sons Elevator Co., Inc., B-197595, December 3, 1980, 60 Comp. Gen.     , 80-2 CPD 414. Consequently, we see nothing in the protester's submission which suggests that fraud or bad faith was involved in the decision to issue a COC.

Moreover, the protest is also untimely. Micrographics alleges that on December 4, 1980, it learned that the SBA was going to award Microtech a COC even though Microtech could not meet the solicitation criteria. Our Bid Protest Procedures require that protests be filed not later than 10 days after the basis for protests is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2) (1980). Micrographics' protest was initially filed on February 4, 1981, well after the 10 days allowed.

The protest is dismissed.

*Harry R. Van Cleave*  
~~Milton J. Secolar~~  
Acting General Counsel