

18343

DECISION



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

FILE: B-203253

DATE: June 4, 1981

MATTER OF: F.M.K. Apparel, Inc.

DIGEST:

GAO will not review contracting officer's determination of non-responsibility where small business bidder does not avail itself of opportunity to file for certificate of competency with Small Business Administration.

F.M.K. Apparel, Inc. (FMK), the apparent low bidder under invitation for bids No. DLA100-81-B-0485 issued by Defense Logistics Agency (DLA), Defense Personnel Support Center, Philadelphia, Pennsylvania, protests award to any other bidder.

DLA reports that it received a negative preaward survey on FMK and determined the firm to be nonresponsible. Moreover, DLA advises that FMK is a small business concern. Under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. I, 1977), and the applicable section of the Defense Acquisition Regulation, § 1-705.4(c), Defense Acquisition Circular No. 76-24, August 28, 1980, no small business concern may be precluded from award because of nonresponsibility without referral of the matter to the Small Business Administration (SBA) for a final disposition under the certificate of competency (COC) procedure regardless of the basis for the nonresponsibility finding. The SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of responsibility. Com-data, Inc., B-191289, June 23, 1978, 78-1 CPD 459; The Forestry Account, B-193089, January 30, 1979, 79-1 CPD 68; Angelo Warehouses Co., B-196780, March 28, 1980, 80-1 CPD 228.

01743T

1154/5

We also have been advised by DLA that the question of FMK's responsibility was referred to the SBA for consideration under the COC procedure and the bidder failed to file a COC application. We will not undertake a review of a contracting officer's determination of nonresponsibility because such action would, in effect, amount to a substitution of our judgment for that of the agency specifically authorized by statute to review such decisions. Comspace Corporation, B-196986.2, February 5, 1980, 80-1 CPD 93.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel