

Zuckerman

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DECISION



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

FILE: B-203781

DATE: July 8 1981

MATTER OF: Diesel Energy Systems Co.

DIGEST:

1. Small Business Administration (SBA) has conclusive authority to determine small business bidder's responsibility initially found nonresponsible by agency by issuing or declining to issue a Certificate of Competency (COC).
2. Agency need not indefinitely withhold award of contract to another offeror found to be responsible pending SBA decision on COC as regulation permits award 15 working days after notice to SBA of request for COC.

Diesel Energy Systems Co. (DESCO) protests the award of a contract under Solicitation No. F41608-81-R-2810 issued by Kelley Air Force Base, Texas. DESCO asserts that it was the low offeror under the solicitation, but that it was found nonresponsible. The matter of DESCO's responsibility has been referred to the Small Business Administration (SBA). DESCO requests that award to any other offeror be withheld until SBA has completed its review. We find no merit to this protest.

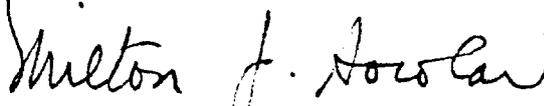
DESCO implicitly acknowledges that SBA is the appropriate authority to determine its responsibility in this instance pursuant to that Agency's Certificate of Competency (COC) proceedings. In this respect, SBA has conclusive authority by law to determine a small business firm's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7)(A) (Supp. III 1979). GAO will not question SBA's actions in this respect unless fraud or bad faith on the part of Government officials is shown or that SBA did not consider

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certain vital information bearing on a small business bidder's compliance with definitive responsibility criteria. E-Systems, Inc. B-199550.5, February 27, 1981, 81-1 CPD 137. None of these conditions are alleged.

However, while an agency is bound by SBA's final determination of responsibility, it need not indefinitely withhold award to another offeror which it has found to be responsible pending SBA's decision on the COC. In this connection the regulation requires that award be withheld until SBA action concerning the issuance of a COC or until 15 working days after SBA is notified of the request for a COC, whichever is earlier. Defense Acquisition Regulation § 1-705.4(c) (1976 ed.). Thus, after the 15 day period has expired, the agency may properly make an award to another offeror if SBA has not acted on the COC.

The protest is summarily denied.


Acting Comptroller General
of the United States