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DECISION



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

FILE: B-204307

DATE: August 26, 1981

MATTER OF: Stoner - Caroga Corp. Inc.

DIGEST:

1. Where small business concern is found to be nonresponsible by procuring activity, subsequent denial of certificate of competency by Small Business Administration (SBA) is viewed as affirmation of nonresponsibility which GAO will not review.
2. GAO does not consider whether bidder is manufacturer or regular dealer under Walsh-Healey Act since by law that is for determination by contracting agency, subject to review by SBA when small business is involved and by Secretary of Labor.

Stoner - Caroga Corp. Inc. (SCC) protests the refusal of the Department of the Army (Army) to award a contract to it under solicitation No. DAAA22-81-B-9001 issued by the Watervliet Arsenal, Watervliet, New York.

The Army determined that SCC was nonresponsible but, since the firm is a small business concern, the matter was referred to the Small Business Administration (SBA) pursuant to 15 U.S.C. § 637(b)(7) (1976 and Supp. I, 1977) for possible issuance of a certificate of competency (COC). SBA declined to issue a COC.

The SBA's denial of a COC is an affirmation of the procuring activity's determination of nonresponsibility. Our Office will not question a contracting officer's determination that a small business concern is nonresponsible where that determination has been

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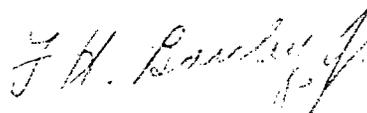
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affirmed by SBA's denial of a COC. See Rosa Pen Co., Inc., B-198803.2, November 18, 1980, 80-2 CPD 366.

SCC also questions any determination that it is not a dealer in accordance with the Walsh-Healey Act, 41 U.S.C. § 35 (1976). In this regard, our Office does not consider the status of a bidder as a manufacturer or a regular dealer under the Walsh-Healey Act because such a matter is by law for the contracting agency's determination in the first instance, subject to review by the SBA when a small business is involved and by the Secretary of Labor. See Alco Tool and Manufacturing, Inc., B-200422, October 8, 1980, 80-2 CPD 260.

The protest is dismissed.

Fw 
Harry R. Van Cleve
Acting General Counsel