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DECISION



Fitzmaurice

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

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FILE: B-205476.3

DATE: March 1, 1982

MATTER OF: Tennier Industries, Inc.

DIGEST:

Protest is dismissed where question of small business protester's responsibility is properly before Small Business Administration for possible issuance of certificate of competency.

Tennier Industries, Inc. (Tennier), protests an award to any other offeror under request for proposals (RFP) No. DLA100-82-R-0148, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA), Philadelphia, Pennsylvania.

The RFP solicited offers for 73,085 sleeping bags as a repurchase of contract No. DLA100-80-C-2217 which DLA terminated for default. Tennier is in line for award under the solicitation pursuant to which the defaulted contract was awarded. However, according to Tennier, the next low offeror has complained to DLA that Tennier is affiliated with the defaulting contractor and, thus, should not get the award. Tennier denies these allegations.

DLA has informed us that a preaward survey team concluded that Tennier is a responsible offeror, but that the contracting officer rejected this finding and held that Tennier is nonresponsible. According to DLA, since Tennier is a small business, the contracting officer has referred the question of Tennier's responsibility to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC).

SBA has conclusive authority 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). Our Office will not question SBA's actions in this respect unless fraud or bad faith on the part of

Government officials is shown or SBA did not consider certain vital information bearing on the small business firm's compliance with definitive responsibility criteria. Diesel Energy Systems Co., B-203781, July 8, 1981, 81-2 CPD 24.

Under the facts presented, if SBA issues a COC, Tennier will receive the award. On the other hand, if SBA refuses to issue a COC, our Office will not review its determination except under the very limited circumstances outlined above.

In light of this, we find that the question of Tennier's responsibility is being considered by the proper forum and that we have no basis to retain jurisdiction over the matter.

We therefore dismiss the protest.

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