

**DECISION**

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

7/1/82  
JWC  
118987

FILE: B-208112

DATE: July 1), 1982

MATTER OF: DWS Inc.

## DIGEST:

Where a small business concern is found nonresponsible by the procuring activity, subsequent denial of a certificate of competency by the Small Business Administration is viewed as an affirmation of nonresponsibility which GAO will not review absent a prima facie showing of fraud or such willful disregard of facts as to imply bad faith.

DWS Inc. protests the rejection of its low bid under invitation for bids (IFB) No. F04699-82-B-0001, issued by the Department of the Air Force. We dismiss the protest.

DWS was found nonresponsible by the Air Force after a pre-award survey. Since DWS is a small business concern, the Air Force referred the matter to the Small Business Administration (SBA) pursuant to 15 U.S.C. § 637(b) (1976 and Supp III, 1979) for possible issuance of a certificate of competency (COC). SBA declined to issue a COC.

DWS contends that the Air Force's determination of nonresponsibility was made in complete disregard of the facts, and that the report of the preaward survey team was full of inaccuracies and misrepresentations. DWS also alleges that the preaward survey team was biased because it included persons who would lose their jobs if the work was contracted out to DWS.

In addition, DWS argues that SBA's denial of the COC was improper. DWS states that SBA found it nonresponsible due to a lack of adequate funding which would be caused by DWS performing the subject contract and another Air Force contract simultaneously. DWS asserts that this finding was erroneous because SBA knew that DWS would not be performing the other contract as it had already denied DWS a COC in that connection.

When an agency determines that a small business bidder is nonresponsible, the law requires that the matter be referred to SBA, which has statutory authority to make final disposition as to all elements of a small business' responsibility, 15 U.S.C. § 637(b). Therefore, our Office will not question a contracting officer's determination that a small business concern is nonresponsible where that determination has been affirmed by SBA's denial of a COC. Stoner-Cryoga Corp. Inc., B-207307, August 26, 1981, 81-2 CPD 182. In addition, the SBA's determination on a COC is not reviewable by our Office unless the protester has made a prima facie showing of fraud or such willful disregard of facts as to imply bad faith. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322.

Since the Air Force's finding of nonresponsibility was affirmed by SBA's denial of a COC in this case, the Air Force's determination is not relevant. See Ken Com, Inc., 59 Comp. Gen. 417 (1980), 80-1 CPD 294. Further, we do not believe that DWS has made a prima facie showing of fraud or willful disregard of facts by the SBA in its determination on the COC in this case.

Although DWS contends that SBA ignored the fact that DWS would not be performing the other Air Force contract due to SBA's denial of a COC in that connection, we do not consider this indicative of bad faith. Rather, in our view, the fact that SBA recently declined to issue a COC for DWS in connection with another contract suggests that SBA's actions here were consistent with its statutory responsibilities. Consequently, we find no basis to consider the matter further.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel