

**DECISION**

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

**FILE:** B-210652.3**DATE:** May 12, 1983**MATTER OF:** Tri-Marine Industries, Inc.**DIGEST:**

GAO generally will not review denial of a certificate of competency, since Small Business Administration has conclusive statutory authority to determine all elements of small business bidder's responsibility. Failure to adopt regional office's affirmative recommendation does not, of itself, show fraud or bad faith on the part of SBA headquarters officials, since this is a business judgment of the type that such officials are expected to make. Nor are SBA's coordination of information with procuring activity, adoption of pre-award survey findings, or failure to provide bidder with opportunity to supplement information in application evidence of fraud or bad faith sufficient to invoke GAO review.

Tri-Marine Industries, Inc. protests the award of a contract to the DeNardi Corporation under request for proposals No. N00024-83-R-2025, issued October 21, 1982, by the Naval Sea Systems Command. Tri-Marine believes it was improperly denied a certificate of competency by the Small Business Administration (SBA). We dismiss the protest.

Tri-Marine was the low offeror for a firm fixed-price contract to fabricate and install 35-foot "sea sheds" that will be used to modify holds so that battle tanks, heavy equipment, and supplies not suitable for containerization can be transported by ship. The contracting officer, however, found Tri-Marine nonresponsible on the basis of a pre-award survey indicating (1) lack of understanding by a prospective subcontractor regarding planning and scheduling necessary to meet the Navy's delivery schedule; (2) lack of firm agreements with subcontractors; and (3) lack of fully developed production milestones. The matter was referred to SBA's Region IX Office in San Francisco, California, which recommended issuance of a certificate of competency. Because the procurement exceeded \$500,000, however, SBA's

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Central Office in Washington, D.C., was required to approve it. This Office declined to issue the certificate, apparently on the basis of insufficient information regarding Tri-Marine's financial condition.

As we have often pointed out, the SBA has conclusive, statutory authority to certify the competency of any small business as to all elements of responsibility. See 15 U.S.C. § 637(b)(7) (Supp. IV 1980). Our Office will review an SBA decision to issue or not to issue a certificate of competency only in limited circumstances, i.e., when there is a showing either of possible fraud on the part of Government officials or of such willful disregard of the facts as to imply bad faith. (Although not at issue here, we also will review the alleged failure of such officials to follow SBA regulations or to consider certain vital information bearing on a small business bidder's responsibility. See Skillens Enterprises, 61 Comp. Gen. 142 (1981), 81-2 CPD 472; J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322.

In our opinion, Tri-Marine has not made a showing of the type necessary to invoke our review here. Although the firm makes approximately a dozen allegations, the essence of its protest is that because SBA headquarters failed to adopt a regional office's recommendation to issue a certificate of competency, Government officials acted fraudulently or in bad faith. SBA regulations, however, require referral of a recommendation for issuance of a certificate of competency whenever a procurement exceeds \$500,000. 13 C.F.R. § 125.5(c) (1982). This procedure, by its very existence, implies that a certain number of recommendations will not be accepted. The Defense Acquisition Regulation (DAR) also recognizes that SBA headquarters may not concur with the proposed affirmative determination of a field office. See DAR § 1-705.4(f) (Defense Acquisition Circular 76-24, August 28, 1980). A denial of a certificate of competency, despite a regional office's recommendation that one should be issued, is therefore the type of business judgment that headquarters officials are on occasion expected to make and does not, of itself, show fraud or bad faith on the part of such officials.

Tri-Marine's second broad basis of protest involves allegedly improper contacts between the Navy and SBA. The DAR, however, requires procuring activities to maintain

close liaison with SBA, to endeavor to reach agreement with SBA, and to provide SBA with their views, including copies of pre-award surveys and other documents supporting a contracting officer's nonresponsibility determination. DAR § 1-705.4(c)(3)(a) and (d). Although Tri-Marine alleges that Navy officials and Central SBA "made a deal" to deny the certificate of competency, neither the fact that Navy officials met with SBA nor that SBA reviewed and adopted the pre-award survey findings is evidence of fraud or bad faith.

Tri-Marine further alleges that SBA failed to identify missing financial data or to contact Tri-Marine and give it an opportunity to provide additional information. There is no statutory or regulatory requirement that SBA provide applicants for a certificate of competency with an opportunity to provide information other than that in their initial applications. Rather, unsuccessful applicants may meet with SBA, but the regulations specifically state that such meetings will be "for the sole purpose of enabling the applicant to improve or correct deficiencies and will not constitute a basis for reopening the case in which the certificate was denied." 13 C.F.R § 125.5(d), supra.

The materials that Tri-Marine has presented to our Office indicate that it disagrees with the conclusions the Navy and SBA drew from the pre-award survey, rather than with the facts revealed by that survey. For example, Tri-Marine acknowledges that its financial statement for the first year of operation showed a net loss, but argues that this was a result of depreciation and amortization of facilities for tax purposes, and that its cash flow and credit are sufficient to perform the contract. In addition, the firm contends that neither subcontracts nor leases would normally be entered into until after award of a contract, and that a detailed production schedule also would be provided after award. None of these arguments, however, supports an allegation that SBA recklessly disregarded the facts of the pre-award survey.

While Tri-Marine obviously believes that SBA should have reached a different conclusion with regard to its responsibility, it has not shown a reasonable possibility that it was denied a certificate of competency due to fraud or bad faith on the part of Government officials.

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The protest is dismissed.

*J. H. Rowley, Jr.*  
*for* Harry R. Van Cleve  
Acting General Counsel