

DECISION

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

26925

FILE: B-212769**DATE:** November 30, 1983**MATTER OF:** F & F Pizano Trucking Company, Inc.**DIGEST:**

A contracting officer's rejection of a small business bidder as nonresponsible without referring the matter to the Small Business Administration under Certificate of Competency procedures was improper.

F & F Pizano Trucking Company, Inc., a small business, protests the contracting officer's determination that the firm was nonresponsible and therefore not eligible for award of a contract under invitation for bids (IFB) No. SCS-58-PA-83 issued by the Soil Conservation Service, United States Department of Agriculture. We sustain the protest.

The solicitation called for streambank restoration services. We are informed that the contracting officer found Pizano, the low bidder, nonresponsible on the basis of the firm's alleged poor management and financial instability and, believing the procurement to be urgent, made award to the next bidder without referring the matter of Pizano's responsibility to the Small Business Administration (SBA) under the Certificate of Competency (COC) procedures.

Under the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), a small business may not be precluded from award on the basis of nonresponsibility without referral of the matter to the SBA for final disposition under the COC procedures. The SBA is empowered to determine conclusively all elements of a small business bidder's responsibility by either issuing or declining to issue a COC. Art's Supplies & Services, B-210156, January 6, 1983, 83-1 CPD 14. We have specifically noted that the act makes no exception for urgency as a justifiable reason for not referring the question of a small business bidder's responsibility to the SBA, and have further noted that the urgency exception previously found in both the Federal Procurement Regulations

027 321

B-212769

and the Defense Acquisition Regulation has been eliminated.
Hatcher Waste Disposal, 58 Comp. Gen. 316 (1979), 79-1
CPD 157.

This contracting officer's action thus was improper in view of the absolute statutory requirement that, before rejecting a small business as nonresponsible the question of the bidder's responsibility be referred to the SBA under COC procedures. As the contract has been completed, however, no corrective action is possible in this case. Metal Service Center, B-206972, January 18, 1983, 83-1 CPD 58. By separate letter, we are advising the Secretary of Agriculture of the procurement deficiency.

The protest is sustained.

for Milton J. Rowland
Comptroller General
of the United States