

DECISION

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

FILE: B-215682

DATE: November 26, 1984

MATTER OF: Percell Funeral Home, Inc.

DIGEST:

GAO will not review a contracting officer's finding that a small business concern is nonresponsive since the Small Business Administration, to which the matter has been referred, has conclusive authority to determine the responsibility of small business concerns under its certificate of competency procedures.

Percell Funeral Home, Inc., protests the award of a contract for mortuary services under invitation for bids No. DABT 23-84-B-0027, issued by the Department of the Army. Percell alleges that its bid was improperly rejected by the Army on the ground that its facilities were inadequate. We dismiss the protest.

In its protest, Percell stated that its bid had been rejected as "nonresponsive" to the facilities requirements set forth in the solicitation. We requested a report from the Army since it appeared possible that the agency had improperly rejected a bid as nonresponsive to a requirement concerning the responsibility of the bidder and not the responsiveness of its bid. See, e.g., Connelly Containers, Inc., B-199180, June 19, 1981, 81-1 C.P.D. ¶ 510 (allegation that awardee lacks the facilities necessary to perform the contract concerns the responsibility of the awardee).

We have been informally advised by the Army that it now considers the adequacy of Percell's facilities to concern the responsibility of that firm, that contracting officials have determined Percell to be nonresponsive and, since Percell is a small business, that they have therefore referred the matter of Percell's responsibility to the Small Business Administration (SBA).

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Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to determine the responsibility of small business concerns by issuing or refusing to issue a certificate of competency. Therefore, this Office will not consider the propriety of the SBA's issuance, or refusal to issue, a certificate of competency absent a showing of possible fraud or bad faith on the part of government officials. See Skyspares Parts, Inc., 63 Comp. Gen. 207 (1984), 84-1 C.P.D. ¶ 170.

The protest is dismissed.

Harry R. Van Cleve
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General Counsel