

Burkard



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Independent Metal Strap Company, Inc.  
**File:** B-240033.3  
**Date:** December 12, 1990

Alvin A. Simon, Esq., for the protester.  
Patrick P. Leneghan, Esq., for North Shore Strapping Company, Inc., an interested party.  
Stuart I. Young, Esq., and Leigh Ann Holt, Esq., General Services Administration, for the agency.  
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. General Accounting Office does not review size status determinations made by the Small Business Administration (SBA) since SBA has conclusive authority to determine small business size status for federal procurements.
2. Small Business Administration (SBA) issuance of certificate of competency is not subject to review by the General Accounting Office absent a showing of possible fraud or bad faith on the part of government officials or that the SBA failed to consider information vital to a determination of responsibility.
3. General Accounting Office does not have authority to impose monetary sanctions or other penalties against protester for filing a protest in bad faith.

### DECISION

Independent Metal Strap Company, Inc. protests the award of certain line items to North Shore Strapping Company, Inc. under invitation for bids (IFB) No. 7FXI-C6-88-3503-S, issued by the General Services Administration for wrapping and packaging machinery. Independent alleges that North Shore engaged in fraudulent activities during the procurement process and that therefore its bid should have been rejected.

We dismiss the protest.

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The solicitation, which was issued on December 19, 1988, sought bids for 68 items; national stock number (NSN) 3540-00-565-6240 (6240) through 3540-00-565-6244 (6244), corresponding to items 39-58, were set aside for small business. North Shore submitted the low-priced bid for items 39-58 and certified that it was a small business. In response to a request by the contracting officer to review North Shore's responsibility, the GSA Quality Assurance Office issued a recommendation that North Shore was "incapable of performing" based on deficiencies in its operations. In addition, the contracting officer was unable to determine whether North Shore actually qualified as a small business and requested that North Shore provide a detailed list of the cost and source of the component parts for the kits it offered. According to the agency, the information provided by North Shore was insufficient for the contracting officer to determine whether North Shore qualified as a small business. By letter dated July 12, 1989, the contracting officer requested that the regional office of the Small Business Administration (SBA) determine whether North Shore was eligible to be considered a small business for purposes of the set-aside line items.

In a size status determination issued on September 8, 1989, the SBA Regional Office stated that North Shore was a small business for each of the NSNs except 6240. North Shore appealed the size determination to the SBA Office of Hearings and Appeals (OHA) as it related to NSN 6240. Independent, which had also challenged North Shore's size status, appealed the regional office size determination, with respect to the other NSNs. Independent supplemented its appeal by letter dated October 12, 1989, alleging fraud on the part of North Shore involving allegedly forged supplier letters. These allegedly forged documents were part of the record before OHA. In light of the allegations of fraud, for the purposes of the size status decision, the OHA accepted only affidavit evidence and required that North Shore document its suppliers and component prices as of the date it submitted its bid. By decision dated March 16, 1990, the OHA affirmed the size status determination made by the SBA Regional Office. The decision states that North Shore had provided the OHA with "extensive documentation in the form of original sworn affidavits . . . the authenticity of which has been independently verified by this Office."

On October 16, 1989, the contracting officer had referred North Shore to SBA for consideration of issuance of a certificate of competency (COC). The SBA and the contracting officer had decided to stay the COC procedure until the appeals concerning North Shore's size status were decided. After the issuance of the OHA decision, the agency requested that SBA continue its COC process as it related to the NSNs

other than 6240. In the same letter, the contracting officer reminded SBA about the allegations of fraud made by Independent Metal against North Shore. SBA issued a COC to North Shore on July 19, 1990. This protest followed.

The protester argues at length that North Shore forged certain documents from suppliers and that the SBA OHA erred in its decision affirming North Shore's small business size status since the OHA relied on incorrect information provided by North Shore. The protester alleges that North Shore misrepresented facts during the OHA size status proceedings and that the OHA did not have information before it concerning the identity of North Shore's original suppliers.

With respect to the protester's argument that the OHA size decision was erroneous because it was based on incorrect or incomplete information, under 15 U.S.C. § 637(b)(6) (1988), SBA has conclusive authority to determine matters of size status for federal procurement purposes. Consequently, our Office will neither make nor review size status determinations. 4 C.F.R. § 21.3(m)(2) (1990); Flexible Serv. Co., B-239037, June 11, 1990, 90-1 CPD ¶ 547. This protest ground is dismissed.

To the extent that the protester also challenges North Shore's responsibility because of the allegedly forged documents, the SBA, and not this Office, has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the COC process. Clyde G. Steagall, Inc. d/b/a Mid Valley Elec., B-237184 et al., Jan. 10, 1990, 90-1 CPD ¶ 43. Our Office will not review the issuance of a COC by the SBA unless the protester makes a showing that government officials may have acted fraudulently or in bad faith or failed to consider vital information bearing on the firm's responsibility. See Custom Research, Inc.--Recon., B-238976.2, June 14, 1990, 90-1 CPD ¶ 567.

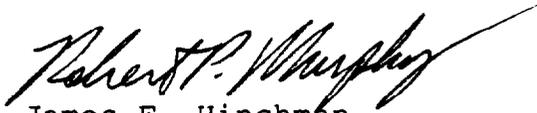
Here, the protester does not allege fraud or bad faith on the part of government officials. Further, the record does not show that SBA did not consider vital information in issuing the COC. Rather, the record shows that GSA and the protester exhaustively brought to SBA's attention the allegations of fraud advanced by Independent, and GSA provided SBA with a copy of the SBA OHA size status decision which specifically addressed the allegations of fraud. Consequently, we will not consider the contention that North Shore is not a responsible contractor. See Ceredo Mortuary, Inc.--Recon., B-241791.2, Nov. 27, 1990, 90-2 CPD ¶ \_\_\_\_.

Finally, GSA has requested that our Office impose monetary sanctions against Independent for filing a protest in bad

faith. GSA argues that the protest here is frivolous and was filed in bad faith. Specifically, GSA argues that Independent knew that its allegations concerning fraud had been thoroughly investigated by SBA and others and had been found to be without merit. GSA states that Independent's sole purpose in filing its protest was to delay further the procurement. (The record supports the agency's position.) The agency argues that sanctions are necessary as punishment to prevent protesters from abusing the bid protest process and contends that we have inherent authority to impose such monetary sanctions.

Our bid protest authority derives from the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (1988). That statute does not impose or explicitly authorize the imposition of penal sanctions. While CICA clearly provides us with the authority to impose administrative requirements necessary for the prompt and effective resolution of protests, it is doubtful that such authority extends to the imposition of monetary sanctions against protesters who file protests in bad faith. See Gold Kist, Inc. v. U.S. Dept. of Agriculture, 741 F.2d 344 (11th Cir. 1984). Accordingly, we decline to consider imposing monetary sanctions here.

The protest is dismissed.

  
for James F. Hinchman  
General Counsel