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**DECISION**



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

*[Protest of Nonresponsibility Determination]*

FILE: B-199169

DATE: November 5, 1980

MATTER OF: Allied Carpetmaster, Inc.

**DIGEST:**

1. Where procuring agency determines small business to be nonresponsible, Small Business Administration (SBA) determination not to issue certificate of competency will not be reviewed by GAO absent showing of fraud or bad faith. Under statute, SBA has conclusive authority to determine all elements of small business firm's responsibility.
2. Claim for bid preparation costs is not for consideration where protest is not considered on merits.

Allied Carpetmaster, Inc. (Allied), protests the determination by the General Services Administration (GSA) that Allied was nonresponsible under solicitation No. GSD-5DPR-00003, a small business set-aside for certain rug cleaning and associated services at various specified areas in GSA Region 5.

For the reasons which follow, we dismiss the protest.

Allied was found nonresponsible by the GSA contracting officer because of prior unsatisfactory performance, poor subcontract relationships, delinquent payment of subcontractors, payment of subcontractors by checks issued with insufficient funds, and a negative plant facilities report. After making this determination, GSA referred the matter to the Small Business Administration, pursuant to Federal Procurement Regulations (FPR) § 1-1.708 (1964 ed.), for consideration by the SBA of the issuance of a certificate of competency

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(COC). SBA declined to issue a COC because Allied was not eligible for a COC under 13 C.F.R. § 125.5(f) (1980), which provides that:

"A small business concern shall not be eligible for a COC unless it performs a significant portion of the contract with its own facilities and personnel to assure SBA that the bidder is not simply an agent."

It is uncontested that Allied would subcontract all of the actual cleaning work.

Under 15 U.S.C. § 637(b)(7) (1976 & Supp. I 1977), the SBA has conclusive authority to determine all elements of a small business firm's responsibility. Our Office does not review denial of a COC by the SBA absent a showing of fraud or willful disregard of the facts so as to imply bad faith. Tamsco, Inc., B-199017, September 3, 1980, 80-2 CPD 172. No such showing has been made here. The record discloses that SBA declined to consider Allied for a COC because Allied subcontracts 100 percent of its work, rendering it ineligible for a COC under SBA's regulations.

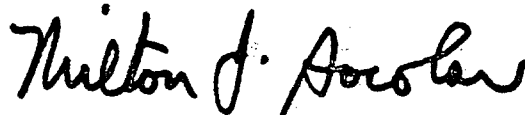
Allied asserts that since SBA did not even consider it for a COC, because of the above-cited regulation, Allied will be denied any review of the contracting officer's allegedly arbitrary determinations unless we elect to review. Allied believes that this result would be contrary to the purpose of the Small Business Act, 15 U.S.C. § 631, et seq. (1976). However, our Office has previously considered this same situation in Hacking Labs, B-197777, April 21, 1980, 80-1 CPD 280, and Allied Carpetmaster, Inc., B-198665, August 13, 1980, 80-2 CPD 115, where we concluded that the determination by SBA not to issue a COC because of the restriction contained in 13 C.F.R. § 125.5(f) (1980) does not warrant our review absent a showing of fraud or bad faith.

Allied also asserts that our failure to provide review on the merits would constitute an impermissible ad hoc amendment of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), which establish an administrative mechanism for review of a contracting officer's actions

which are felt to be arbitrary, capricious, fraudulent or any other improper conduct in contract award matters. We do not believe that any such "amendment" is entailed since our Procedures do not mandate consideration on the merits of all cases. Moreover, we have consistently dismissed cases without development or consideration on the merits where the bases of the protests, as here, were without legal merit. See Murphy Anderson Visual Concepts--Reconsideration, B-191850, July 31, 1978, 78-2 CPD 79.

Finally, the protester has requested reimbursement for bid preparation costs in the amount of \$1,882.18. Where our Office has dismissed a protest and not considered the merits, a claim for bid preparation costs is also not for consideration. Cf. Tamp Corporation, B-195335, August 7, 1979, 79-2 CPD 94.

Accordingly, the protest and claim are dismissed.



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General Counsel