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DECISION



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

FILE: B-204027

DATE: August 31, 1981

MATTER OF: Triple A Machine Shop, Inc.

DIGEST:

Protest filed with GAO is dismissed because material issues of protest are before court of competent jurisdiction, protester has not requested judicial relief pending GAO decision, and court has not otherwise indicated interest in GAO decision.

Triple A Machine Shop, Inc. (Triple A), protests the possible award to Service Engineering Co. (SECO) under invitation for bids No. N62798-81-B-0099 for certain topside overhaul and repair work. Triple A contends that SECO's bid was late and that SECO is not responsible. Triple A also contends that the bid of Todd Shipyard and Service Engineering Co. was also late. This contention need not be considered because award will be made to SECO if SECO is determined to be responsible.

Triple A has also filed suit in the Federal District Court in California, raising essentially the same material issues that are raised here. Triple A has advised our Office that the court has enjoined award pending issuance of a certificate of competency by the Small Business Administration (SBA).

It is the policy of our Office not to decide protests where the material issues are pending before a court of competent jurisdiction unless the court requests, expects, or otherwise expresses an interest in our decision. 4 C.F.R. § 21.10 (1981). Plaintiff Triple A has not requested judicial relief pending a decision by this Office, and the Federal District Court has not indicated interest in our decision. Therefore, the protest is dismissed. Northwest Polymeric, Inc., B-200348, November 10, 1980, 80-2 CPD 353.

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Moreover, 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. We generally do not review those SBA determinations unless there is a prima facie showing of fraud or that information vital to a responsibility determination has not been considered. See Texas Industrial Coating Corporation, B-203266, May 28, 1981, 81-1 CPD 421; Service Engineering Co., B-204027.2, August 20, 1981, 81-1 CPD _____.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel