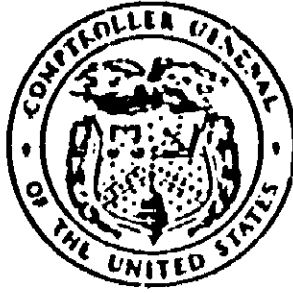


118527

DECISION



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

FILE: B-207539

DATE: June 1, 1982

MATTER OF: Tri-Marine Industries, Inc.

DIGEST:

GAO will not undertake an independent review of a contracting officer's non-responsibility determination of a small business firm because the Small Business Administration, not GAO, has the statutory authority to conclusively determine a small business bidder's responsibility.

Tri-Marine Industries, Inc. protests a decision by the contracting officer that the firm is not a responsible contractor under invitation for bids (IFB) No. N62474-79-B-5826, issued by the Naval Facilities Engineering Command, San Bruno, California for caisson construction.

Attachments to Tri-Marine's letter of protest show that a preaward survey was conducted in which Tri-Marine received unsatisfactory ratings concerning its technical capability, its plant and facilities and its ability to meet the required schedule. As a result, the contracting officer found Tri-Marine to be nonresponsible. Since Tri-Marine is a small business, however, the contracting officer has referred the question of Tri-Marine's responsibility to the Small Business Administration (SBA) for possible issuance of a Certificate of Competency (COC).

Tri-Marine states that the Navy "failed to recognize" that the firm met all minimum performance requirements and that while Tri-Marine "appreciates" SBA's evaluation under the COC program, it feels that the COC procedure, in this instance, is "unnecessary and redundant." Tri-Marine concludes that it is the low qualified bidder and is therefore entitled to award.

Tri-Marine's correspondence indicates that it is simultaneously pursuing its application to SBA for a COC and asking our Office to review, and overturn, the contracting officer's determination that Tri-Marine is not a responsible prospective contractor for the purposes of this procurement. Although Tri-Marine speaks of the Navy's referral of this matter to SBA as though it were discretionary, and SBA's "intervention" as welcome but gratuitous, that is not the case.

By statute, SBA has the "duty" and is "empowered" to "certify to Government procurement officers * * * with respect to all elements of responsibility * * * of any small business concern * * * to receive and perform a specific Government contract." The statute continues:

"* * * A Government procurement officer * * * may not, for any reason specified in the preceding sentence preclude any small business concern * * * from being awarded such contract without referring the matter for a final disposition to [SBA]."

15 U.S.C. § 637(b)(7)(A) (Supp. III 1979). Therefore, when the contracting agency found Tri-Marine to be nonresponsible, the agency was required, by statute, to refer the matter to SBA for its decision.

The statute grants SBA, not this Office, conclusive authority to determine a small business firm's responsibility by issuing or refusing to issue a COC. Consequently, we will not undertake an independent review of a contracting officer's nonresponsibility determination because such action, in effect, would amount to a substitution of our judgment for that of the SBA, the agency specifically authorized by statute to review such decision. Numax Electronics Incorporated, B-204632.2, December 10, 1981, 81-2 CPD 457.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel