

B. Allen 120013

DECISION



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

FILE: B-209859; B-209860

DATE: December 2, 1982

MATTER OF: Wallace & Wallace, Inc.
Wallace & Wallace Fuel Oil, Inc.

DIGEST:

1. GAO will not review a contracting officer's determination of non-responsibility with respect to a small business bidder where the bidder elects not to seek a certificate of competency from the Small Business Administration, since review would result in the substitution of the GAO for the agency specifically authorized by statute to review the determination.
2. Allegation that a nonresponsibility determination with respect to a small business was racially motivated will not be considered by GAO unless protester makes showing of possible discriminatory action; bare unsupported allegation is not sufficient.

Wallace & Wallace, Inc., and Wallace & Wallace Fuel Oil, Inc., protest the Defense Logistics Agency's (DLA) determination that the firms are nonresponsible bidders for financial reasons and thus ineligible for award under Solicitation Nos. DLA800-82-B-0002 and DLA600-82-R-0100 respectively. The protesters assert that the determination was improper and reflects "institutional racism."

We will not consider the merits of these protests.

The two firms are small businesses. Consequently, DLA referred the matter to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC) under 15 U.S.C. §637(b)(7) (Supp. IV 1980), which provides that no small business concern may be precluded from award because of nonresponsibility without referral of the matter to the SBA for a final disposition under the COC procedures. Sphere Management Inc., B-200267.3, September 14, 1981, 81-2 CPD 213. We are advised by DLA that the two firms failed to pursue COC applications with the SBA and that SBA therefore did not issue a COC to either firm.

The COC procedure, provided for by statute and regulation, affords small business concerns a degree of protection against unreasonable determinations as to their responsibility by contracting officers. We have taken the position that it would be inappropriate for us to consider a challenge to a nonresponsibility determination when the company involved is eligible but fails to avail itself of the COC procedure, since that would amount to our substituting for the agency specifically authorized by statute to review such determinations. See General Automotive, Diesel and Industrial Repair, Inc., B-204140, September 8, 1981, 81-2 CPD 203. Therefore, we will not consider the general challenges to the nonresponsibility determinations.

With respect to the allegation of racism, we note that the protesters have offered no explanation or provided any supporting information or documentation for this allegation. In certain other cases, such as where fraud or bad faith has been alleged in connection with an affirmative determination of responsibility, we have often pointed out that a bare allegation is not enough--some reasonable showing of possible fraud or bad faith is necessary before we will consider a complaint based on such an allegation. See, e.g., Policy Research Inc., B-200386, March 5, 1981, 81-1 CPD 172 and cases cited therein. Similarly, we believe an allegation of racial discrimination in connection with a matter we would not ordinarily review--such as we have here--must be sufficiently supported, so that there is some showing of possible discrimination, before we should commence review of the matter under our protest procedures. Since the protesters have made no such showing, we will not consider the protests.

The protests are dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel