

DECISION

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

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FILE: B-213037.2**DATE:** November 15, 1983**MATTER OF:** Nugier Hydraulics, Inc.**DIGEST:**

GAO cannot require the suspension or delay of contract performance pending the Small Business Administration's review of that agency's refusal to issue the low bidder a certificate of competency, since to do so would constitute an exercise of equitable jurisdiction which can only be granted by statute, and GAO does not have that statutory authority.

Nugier Hydraulics, Inc. protests that performance of a contract awarded to Savage Mfg. & Sales, Inc. under solicitation No. DAAA22-82-B-9008, a small business set-aside issued by the Department of the Army for gun barrel presses, should be suspended. Nugier was the low bidder, but a pre-award survey indicated Nugier was unable to meet the solicitation's definitive responsibility criteria. The matter then was referred to the Small Business Administration (SBA) for review of Nugier's responsibility under the certificate of competency (COC) procedures. On September 30, 1983, the SBA refused to issue a COC, and award was made to Savage on October 4. Nugier requests that this Office suspend contract performance so that the SBA may reevaluate the firm's qualifications for issuance of a COC. We dismiss the protest.

Our Office cannot require that contract performance be delayed or suspended in this type of situation. See Handi-John; Mobil Johnny of Albany, Inc., B-186503, B-186577, July 2, 1976, 76-2 CPD 7. Such action on our part would constitute an exercise of equitable jurisdiction which can be exercised only where it is specifically granted by statute, and there is no statutory authority for our Office to afford the relief sought. See R. H. Pines Corporation, 54 Comp. Gen. 527 (1974), 74-2 CPD 385.

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We also note that SBA's COC determination is conclusive as to a prospective contractor's responsibility, 15 U.S.C. § 637(b) (1982), so that once the SBA refused to issue a COC to Nugier, the contracting officer properly awarded the contract to the next low responsive, responsible bidder.

The protest is dismissed.

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