

DECISION

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

FILE: B-213800; B-213800.2

DATE: December 21, 1983

MATTER OF: Horsburgh & Scott Company;
Appleton Machine Company

DIGEST:

1. Under 15 U.S.C. § 637(b)(7), Small Business Administration (SBA) has authority to issue or deny certificate of competency and GAO will not review SBA determination absent prima facie showing of fraud or willful disregard of facts.
2. GAO will not consider an allegation that a firm is not a small business eligible for a set-aside award since the conclusive authority to decide matters concerning small business' size status is vested with the SBA.

Horsburgh & Scott Company and Appleton Machine Company protest the possible award of a contract to Smatco, Inc. and Horsburgh protests the possible award to Appleton under invitation for bids (IFB) No. N00024-83-B-4241 issued as a small business set-aside by the Naval Sea Systems Command for winches.

Horsburgh contends that Smatco, the apparent low bidder, is not responsible and that Appleton, the apparent second low bidder, does not qualify as a small business. Appleton also contends that Smatco is not responsible. Our Office has been advised that on November 25, 1983, the Small Business Administration (SBA) issued a certificate of competency (COC) to Smatco.

We do not review protests concerning bidders' responsibility or size status in a small business set-aside procurement. Accordingly both protests are dismissed.

SBA has conclusive authority by law to make final determinations of responsibility for small business concerns under a particular procurement pursuant to its COC procedures. 15 U.S.C. § 637(b)(7) (1982). Therefore, our Office generally will not review such SBA determinations unless

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there is a prima facie showing of fraud or such willful disregard of facts as to imply bad faith. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322; Calcagni Machine Works, Inc., B-203598, June 26, 1981, 81-1 CPD 536. The protesters have not made such a showing.

In light of the COC issued to Smatco, the challenge to Appleton's eligibility to compete for and ultimately receive award under this small business set-aside is academic. We point out however, that we do not consider whether a firm is a small business under the size standard applicable to the procurement. As we have stated in numerous prior decisions, our Office is not empowered to make such determinations. Rather, under 15 U.S.C. § 637(b)(6), the SBA has conclusive authority to determine matters of small business size status for procurement purposes. Therefore, we would not consider whether Appleton qualified for award as a small business, in any event. Telex Communications, Inc., B-208382, August 17, 1982, 82-2 CPD 142.

The protests are dismissed.

Harry R. Van Cleve
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Acting General Counsel