

DECISION

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

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FILE: B-214516**DATE:** July 16, 1984**MATTER OF:** J. E. McAmis, Inc.**DIGEST:**

Where a small business concern is determined to be nonresponsible by a contracting officer, GAO will not review the subsequent denial by the Small Business Administration of a certificate of competency absent a prime facie showing of fraud or bad faith, or of the failure to consider information bearing on the concern's responsibility.

J. E. McAmis, Inc. (McAmis), protests being found nonresponsible under invitation for bids (IFB) No. DACW07-84-B-0010 issued by the United States Army Corps of Engineers (Army) for maintenance dredging in Santa Cruz, California.

McAmis, the low bidder under the IFB, contends that the contracting officer's nonresponsibility determination was a result of favoritism towards the second low bidder and was not based on an evaluation of McAmis' capabilities. McAmis also protests the refusal of the Small Business Administration (SBA) to issue it a certificate of competency (COC) after Army referred the matter to SBA.

We dismiss the protest.

The SBA, not this Office, has statutory authority to review a contracting officer's negative determination and to determine conclusively a small business concern's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7) (1982). Consequently, we will not undertake an independent review of a contracting officer's nonresponsibility determination, since such review would be tantamount to a substitution of our judgment for that of the SBA. Tar Heel Canvas Products, Inc., B-211537, May 6, 1983, 83-1 C.P.D. ¶ 481. Our Office generally limits its review of a denial of a COC to instances in which the protester makes a prima facie showing of fraud or bad

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faith, or of failure by the SBA to consider vital information bearing on the firm's responsibility. Martin Tool and Die, Incorporated, B-208796, Jan. 19, 1983, 83-1 C.P.D. ¶ 70.

With regard to the SBA's determination to deny McAmis a COC, McAmis states that, in its application for a COC, it submitted a copy of the marine survey on the dredge Rogue and substantial information on the availability of a backup dredge, Sandpiper One, but that the SBA disregarded this information. McAmis disagrees with the SBA's conclusion and, therefore, assumes that the SBA ignored certain information in making its determination. However, the SBA denial of the COC states that it is "[b]ased on a comprehensive analysis of all available information." While McAmis may believe that the SBA should have drawn a different conclusion based on that information, mere disagreement with the SBA does not amount to a prima facie showing that the SBA acted fraudulently or in bad faith, or failed to consider the information. See Tri-Marine Industries, Inc., B-210652.3, May 12, 1983, 83-1 C.P.D. ¶ 503. Consequently, we will not review the protest.

Harry R. Van Cleve

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Acting General Counsel