

DECISION



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

FILE: B-216974

DATE: December 11, 1984

MATTER OF: Belex Enterprises, Inc.

DIGEST:

GAO will not review Small Business Administration (SBA) decision regarding the responsibility of a small business, absent a showing of possible fraud or bad faith on the part of contracting officials. Where protester alleges fraud on the part of contracting officials, but matter is presently before SBA for a certificate of competency decision, GAO will not consider allegation until SBA issues its decision and only if SBA declines to issue a certificate of competency.

Belex Enterprises, Inc. (Belex), protests against an allegedly fraudulent preaward survey conducted by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania, which apparently was the basis of a finding by DPSC that Belex was not responsible under invitation for bids (IFB) No. DLA100-84-B-1049. We dismiss the protest.

DPSC informally advised us that the contracting officer has referred the matter of Belex's responsibility to the Small Business Administration (SBA). Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to determine the responsibility of small business concerns by issuing or refusing to issue a certificate of competency. Generally, we will not review the SBA's decision in this regard unless there is a showing of possible fraud or bad faith on the part of contracting officials or SBA allegedly did not follow its own regulations or consider material information in reaching the decision. Cal Pacific Fabricating, Inc., B-214946, May 22, 1984, 84-1 C.P.D.

¶ 552. While Belex has alleged fraud on the part of contracting officials, and a showing of possible fraud is one of the circumstances in which we will review SBA certificate of competency determinations, we will not presently consider Belex's allegation because the SBA has

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not yet made a determination. The SBA may issue a certificate of competency, in which case there would be no need for a decision from GAO. If SBA declines to issue a certificate of competency, Belex may then protest to GAO, and we will examine its allegations and determine whether the circumstances permit our review of SBA's determination.

The protest is dismissed.

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