

DECISION

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

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t. Maurice
PL-I

FILE: B-218557; B-218558; **DATE:** May 7, 1985
B-218559

MATTER OF: Franklin Wire & Cable Company

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 showing of possible fraud or bad faith on the part of the contracting officials or of SBA's failure to consider vital information bearing on the firm's responsibility.

Franklin Wire & Cable Company protests being found nonresponsible under three solicitations, Nos. DLA500-84-B-1712, DLA500-84-B-1938, and DLA500-84-B-1427, issued by the Defense Industrial Supply Center, Defense Logistics Agency (DLA), Philadelphia, Pennsylvania. DLA referred the nonresponsibility determinations to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC), but the SBA refused to issue a COC. Franklin requests that our Office review the record and find that it is entitled to the contract awards.

We dismiss the protests.

The SBA, not this Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility. It does so by either issuing or refusing to issue a COC in accord with the Small Business Act, 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 a review would be tantamount to a substitution of our judgment for that of the SBA. Our Office generally limits its review of the denial of a COC to instances in which the protester makes a showing of either possible fraud or bad faith on the part of the contracting officials or that SBA failed to consider vital information bearing on the firm's responsibility. White's Shopping Service, Inc., B-215199, July 20, 1984, 84-2 CPD ¶ 21.

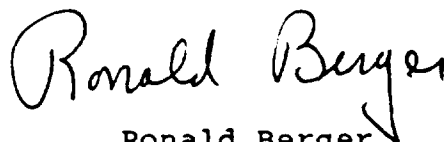
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Franklin alleges that DLA has acted in bad faith here because it conducted a preaward survey and, as a result, inaccurately concluded that Franklin was not a regular dealer under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1982). Franklin also alleges that DLA continued its bad faith practices by either knowingly or negligently providing this inaccurate information to the SBA. Franklin states that despite this information, the SBA subsequently determined that it was a regular dealer.

The documents provided to this Office by Franklin simply do not support these allegations. Rather, they show that DLA initially referred its findings to the SBA, but as a result of two preaward surveys found that Franklin met the requirements for a regular dealer and withdrew its request for a Walsh-Healey determination. According to a letter dated March 6, 1985, from SBA's Philadelphia Regional Office to Franklin, the SBA rendered no decision on the Walsh-Healey matter in considering Franklin's responsibility.

As to Franklin's request that we review the SBA's decision not to issue a COC, the record shows that SBA considered the firm's performance on prior contracts and its financial capabilities before declining to issue the COC. Franklin appears to be disagreeing with SBA's conclusions, rather than with the facts on which those conclusions were based. Such a disagreement does not show a reasonable possibility that Franklin was denied a COC due to fraud or bad faith or provide our Office with other grounds on which to undertake an independent review of SBA's decision. See Tri-Marine Industries, Inc., B-210652.3, May 12, 1983, 83-1 CPD ¶ 503.

Franklin has not stated a valid basis for protest. Therefore, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.1(f) (1985), the protests are dismissed.



Ronald Berger
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General Counsel