

DECISION

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

FILE: B-220088.2; B-220089.2 **DATE:** October 8, 1985

MATTER OF: The Swanson Associates, Inc.

DIGEST:

Request for reconsideration of decision dismissing protest is denied where the protester has not shown that the agency's nonresponsibility determination and the subsequent denial of a Certificate of Competency (COC) by the Small Business Administration (SBA) resulted from possible fraud or bad faith on the part of government officials. Neither agency communications with the SBA concerning the protester's ability to perform nor the agency's failure to return the COC referral to SBA for reconsideration constitute sufficient evidence of fraud or bad faith.

The Swanson Associates, Inc. requests reconsideration of our decision to dismiss its protests against the General Services Administration's (GSA) award of security guard contracts under solicitation Nos. GS-11C-50081 and GS-11C-50043. We dismissed the protests because we will not review the denial by the Small Business Administration (SBA) of a Certificate of Competency (COC) absent a showing of possible fraud or bad faith on the part of government officials. Swanson was denied a COC, but had not made such a showing.

We deny Swanson's request for reconsideration.

Swanson argues that it was not protesting SBA's refusal to issue a COC but instead was protesting GSA's improper and unfair attempts to influence SBA to decline the COC, as well as GSA's refusal to return the matter to SBA after SBA notified GSA that SBA would reconsider if requested to do so. Swanson therefore asserts that we misunderstood its protest.

We did not misunderstand Swanson's protest. As indicated, we simply found that the required showing of possible fraud or bad faith had not been made and

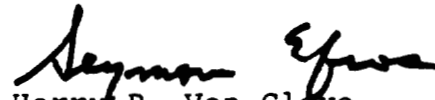
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therefore notified the protester that we do not review SBA denials of COCs. We find that the showing of possible fraud or bad faith had not been made because the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.602-3 (1984), encourages a complete exchange of information between the agency and SBA to resolve any disagreement about a concern's ability to perform, and we believe this regulation clearly provides for agency communications with SBA that may influence SBA's decision to issue a COC. Therefore, we do not consider such communications to constitute evidence of fraud or bad faith. See Cal Pacific Fabricating, Inc., B-214946, May 22, 1984, 84-1 CPD ¶ 552.

In addition, we note that SBA makes its own independent investigation of a firm's responsibility. See FAR, 48 C.F.R. § 19.602-2(a)(2). Accordingly, SBA's denial of a COC is not based exclusively, if at all, on information supplied by the agency in any event.

With respect to GSA's failure to return the COC matter to SBA after SBA indicated that it would reconsider its position if GSA requested it to do so, we are aware of no requirement that an agency return a COC referral to SBA for reconsideration under these circumstances. Moreover, Swanson has submitted no evidence to establish that GSA's failure to do so here resulted from fraud or bad faith. Therefore, we find no basis for our review of Swanson's protest on this issue.

The request for reconsideration is denied.

for 
Harry R. Van Cleve
General Counsel