



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Zan Company, Inc.

File: B-229705

Date: December 15, 1987

DIGEST

Where contracting officer refers nonresponsibility determination to the Small Business Administration (SBA), but protester fails to file for a Certificate of Competency, the General Accounting Office (GAO) will not review the contracting officer's determination since such a review would in effect substitute GAO for SBA.

DECISION

Zan Company, Inc. protests the rejection of its bid under request for proposals (RFP) No. DAAA09-87-R-0796 issued as a small business set-aside by the Army Armament, Munitions and Chemical Command for a quantity of soldier protective mask carriers. Zan argues that the Army improperly found it nonresponsive.

We dismiss the protest.

In connection with the procurement, the contracting officer, on November 2, 1987, found Zan nonresponsive despite a positive preaward survey because of a poor performance record on past and current contracts. Thereafter, the contracting officer referred the determination to the Small Business Administration (SBA). The SBA received the referral on November 9, and on that same day telephonically contacted the president of Zan to inquire whether Zan intended to file for a Certificate of Competency (COC). Zan indicated that it would file for a COC and the SBA sent it the application materials which indicated that those materials were due by November 18. Zan failed to submit the application materials and, by letter dated November 19, was informed by the SBA that the agency had closed its file with respect to the matter.

In its letter of protest, Zan argues that the Army's determination of nonresponsibility was made in bad faith and that filing for a COC with the SBA would be time consuming, drain the firm's resources and be futile.

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Under 15 U.S.C. § 637(b) (1982), the SBA has conclusive authority to determine the responsibility of a small business by issuing or failing to issue a COC. When a contracting agency finds that a small business is nonresponsible, the burden is on the firm to apply for a COC from the SBA in order to avail itself of the protection afforded against unreasonable determinations by the contracting officer. Ferrite Engineering Labs, B-225997, Feb. 27, 1987, 87-1 CPD ¶ 231. Where, as here, the firm fails to apply for a COC, we will not review the contracting officer's underlying determination of nonresponsibility since such a review would in effect substitute our Office for the SBA, the agency authorized by statute to review nonresponsibility determinations. Id. Moreover, although Zan has alleged that the Army's determination of nonresponsibility was made in bad faith, it has provided absolutely no evidence in support of this assertion and there is nothing in the record to support it.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel