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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Zan Machine Company, Inc.--Request for
Reconsideration
File: B-229705.2
Date: January 19, 1988

DIGEST

General Accounting Office will not review a protester's allegation of bad faith on the part of procurement officials in determining that the firm is nonresponsible where the firm fails to pursue its administrative remedy of applying for a Certificate of Competency from the Small Business Administration.

DECISION

Zan Machine Company, Inc. requests that we reconsider our decision in Zan Company, Inc., B-229705, Dec. 15, 1987, 87-2 CPD ¶ _____. In that decision we dismissed Zan's protest against an Army Armament, Munitions and Chemical Command contracting officer's determination of the firm's nonresponsibility under request for proposals No. DAAA09-87-R-0796 because the firm had failed to file with the Small Business Administration (SBA) for a Certificate of Competency (COC). In its request for reconsideration, Zan argues that we should review the agency's nonresponsibility determination because it was made in bad faith.

We deny the request for reconsideration.

As we noted in our prior decision, the SBA has conclusive authority to review nonresponsibility determinations made with respect to small businesses by issuing or failing to issue a COC. 15 U.S.C. § 637(b) (1982). When a small business is found to be nonresponsible, and the matter is referred to the SBA, 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. Ion Exchange Products, Inc., B-218578, et al., July 15, 1985, 85-2 CPD ¶ 52; 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

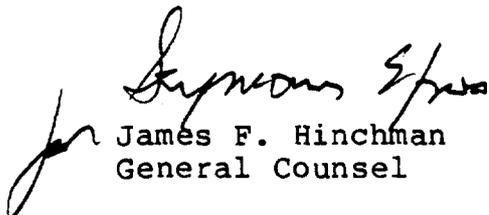
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not review the contracting officer's underlying determination of nonresponsibility since such a review would in effect substitute our Office for the SBA, the agency authorized by statute to review nonresponsibility determinations. Ion Exchange Products, Inc., supra; Ferrite Engineering Labs, supra.

In our original decision, we noted that although Zan had alleged that the Army's determination of nonresponsibility was made in bad faith, Zan had offered absolutely no evidence in support of its assertion and that there was nothing in the record to support the allegation. On reconsideration, for the first time, Zan attempts to support its allegation that the Army's finding of nonresponsibility was made in bad faith. Specifically, Zan has offered a copy of the contracting officer's referral letter to the SBA, as well as a detailed rebuttal of the contracting officer's nonresponsibility determination.

We again decline to review the contracting officer's underlying nonresponsibility determination. In circumstances such as these, our review is limited to whether bad faith or fraudulent actions on the part of procurement officials resulted in a denial of the protester's opportunity to seek SBA review of a nonresponsibility determination or whether the SBA's denial of a COC was made in bad faith. Thus, we have reviewed protests where the actions of procurement officials allegedly have prevented a firm from seeking a COC, see Washington Printing Supplies, Inc., B-227099, Sept. 11, 1987, 66 Comp. Gen. ____, 87-2 CPD ¶ 234, or where there is an allegation that the bad faith or fraudulent actions of procurement officials have resulted in the SBA's denial of a COC, Franklin Wire & Cable Co.--Reconsideration, B-218557.2, et al., June 5, 1985, 85-1 CPD ¶ 644. Similarly, we will review allegations that bad faith or fraudulent actions on the part of SBA officials have resulted in the denial of a COC or where there is an allegation that SBA officials failed to consider vital information bearing upon a firm's responsibility. AquaSciences International, Inc.--Request for Reconsideration, B-225452.2, Feb. 5, 1987, 87-1 CPD ¶ 127. Where however, a firm fails in its duty to diligently pursue its administrative remedy of applying for a COC, our Office will not review the underlying nonresponsibility determination.

The request for reconsideration is denied.


James F. Hinchman
General Counsel