

You state on page 5 that once a COC is issued that the agency must award the contract. I understand that the way it used to be was that you checked into their capacity and credit and, if you found that it was satisfactory or acceptable, you issued the COC, and they were supposed to let them have the contract. Now they are finding other ways and means of getting around this certificate of competence and stating that they don't have the tenacity necessary, or the perseverance. They are finding other avenues to evade the COC. Would you want to elaborate for the record on this?

Mr. BOTHMER. Yes, Mr. Chairman. Several years ago the first test case of this kind arose in which the small bidder on a Government contract was disqualified on the basis of tenacity and perseverance. This generally refers to the record of the small business company on past transactions, its record of performance, as opposed to its financial capability and its capacity in tooling and plant. This concept was tested and upheld by the General Accounting Office.

We think in SBA that certainly the procuring agency has every obligation to ascertain the tenacity and perseverance of a firm. We don't know exactly how much impact the use of tenacity and perseverance is having, but we feel that it could be very substantial. And we feel that one of the things that should be looked at very closely is the question of the current status of the firm. In other words, if its past record is the sole basis for determining its tenacity and perseverance, and it is ruled out on the basis of that record without any current look at perhaps changes in the management, changes in the policy or other things that would have a bearing on that record, it would be very difficult indeed for a small concern to ever get back into Government procurement.

And, therefore, we think there must be a current look at the question of the firm's willingness to perform before it is ruled out on the basis of tenacity and perseverance.

Mr. MITCHELL. As a practical matter, Mr. Bothmer, hasn't SBA in the past when it surveyed a company as to capacity and credit taken all these factors into consideration?

Mr. BOTHMER. Yes, Mr. Mitchell. We in SBA—and I certainly as an individual—feel very strongly indeed that we are doing no one any favors by certifying as to the competence of a firm if it is not truly competent. And by that I mean from all standpoints that we are able to make any check on. We don't think we are helping the small business if they can't perform the contract. And we are certainly not interested in certifying people who can't fulfill their obligations to the procuring agency. So we do in fact check on every aspect of the business.

Mr. MITCHELL. Then if Congress, in order to straighten out this matter, desired to add the words "tenacity and perseverance" in section 8(b)(7) of the Small Business Act, it would actually put no greater burden on your agency; it would actually clear the matter up more than anything, wouldn't it?

Mr. BOTHMER. Yes, sir; that is correct.

Mr. MITCHELL. That is all.

The CHAIRMAN. At what levels are your small business specialists in procurement stationed in the Department of Defense?

Mr. BOTHMER. Generally, when we have fully implemented this program, Mr. Chairman, we will have some 45 procurement center