

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

1002  
60993 98821

FILE: B-185963

DATE: June 16, 1976

MATTER OF: Gallery Industries, Inc. - Request for Reconsideration

**DIGEST:**

Prior decision declining to consider merits of protest against determination of nonresponsibility is affirmed on reconsideration. Protester failed to show that either SBA, which denied a certificate of competency, or agency failed to consider information vital to responsibility determination.

Gallery Industries, Inc. (Gallery), has requested reconsideration of our decision of April 16, 1976, which declined to consider the merits of its protest against the nonresponsibility determination of the Naval Ordnance Station, Louisville, Kentucky, under solicitation No. N00197-76-B-0036.

Upon review of the recommendations and findings of a preaward survey team, the contracting officer determined that Gallery was non-responsible. The survey team recommended that "no award" be made to the company based on unsatisfactory ratings in financial capability, purchasing and subcontracting, and ability to meet required schedule. The contracting officer referred the question of Gallery's competency to do the work to the Small Business Administration (SBA). By letter dated February 4, 1976, SBA advised the contracting officer that, based upon a comprehensive analysis of all available information, it had declined to issue a certificate of competency (COC).

In declining to consider the protest on the merits, we cited Zinger Construction Company, Inc., B-185390, December 16, 1975, 75-2 CPD 397. That case held that our Office (a) will not question the contracting officer's determination of nonresponsibility of a small business concern where it has been affirmed by the SBA by the denial of a COC; and (b) has no authority to review SBA determinations or to require the SBA to issue a COC or to reopen a case when a COC has been denied.

Gallery, in requesting reconsideration, characterizes its original protest as not taking issue with the denial of the COC by SBA, but rather taking issue with alleged deficiencies in the information relied upon by the preaward survey team and the contracting officer. According to Gallery, these alleged deficiencies could have been explained away if the firm had been given the opportunity to address the negative responsibility findings of the agency. Gallery further argues that a contracting officer's determination should be overturned if clear and convincing evidence discloses error or lack of a reasonable basis, citing, inter alia, Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31.

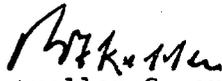
In Harper both the procuring agency and SBA, which had denied a COC, refused to take into account a joint venture agreement which would have materially affected the determination of nonresponsibility of the small business involved. However, in rejecting an attempted second referral by the agency upon the latter's discovery of the agreement for other reasons, the SBA acknowledged that the company could possibly perform the contract if the agreement was taken into consideration. We advised the agency to reassess the responsibility of the contractor based upon the agreement previously ignored.

Further, in Kepner Plastics Fabrication, Inc., et al., B-184451, B-184394, June 1, 1976, where a COC was issued, the referral to SBA was prompted by doubts as to the company's capacity and credit. It was not until after a protest was filed with this Office that the firm's ability to comply with the definitive responsibility requirements was first raised. The record did not indicate whether the SBA considered the requirements in issuing the company a COC. Therefore, we advised the procuring agency that the SBA should be asked to reconsider the issuance of the COC if the definitive responsibility requirements were not previously considered.

Both Harper and Kepner disclose the position of our Office to make appropriate recommendations in COC situations where the record discloses that information vital to a responsibility determination has not been considered. Gallery has presented no evidence to show that either SBA or the agency failed to consider all relevant information. Of particular importance, after the determination of nonresponsibility by the agency, Gallery was afforded an opportunity to furnish detailed data to SBA on the question of its competency to do the work.

B-185963

Accordingly, our decision not to hear the merits of the protest is affirmed.

  
Deputy Comptroller General  
of the United States