

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

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FILE: B-210156.2**DATE:** September 23, 1983**MATTER OF:** Art's Supplies & Services--Reconsideration**DIGEST:**

To be eligible for a Certificate of Competency under Small Business Administration procedures, a small business bidder must perform a significant portion of the contract with its own facilities and personnel. An ineligibility finding on that basis is tantamount to an affirmation of the contracting officer's original determination of nonresponsibility and therefore not subject to GAO review.

Art's Supplies & Services requests reconsideration of our decision in Art's Supplies & Services, B-210156, January 6, 1983, 83-1 CPD 14, dismissing the firm's protest against a determination by the Department of the Navy that it was nonresponsible under solicitation No. N00604-82-B-A186 for sheet metal services. In that decision, we reaffirmed our well-established policy not to review a contracting officer's determination of nonresponsibility with respect to a small business bidder, since by law the Small Business Administration (SBA) is empowered to determine conclusively the responsibility of a small business by either issuing or declining to issue a Certificate of Competency (COC). 15 U.S.C. § 637(b)(7) (1982).

Subsequent to our decision, the SBA found that Art's is not eligible for a COC under the SBA's regulation at 13 C.F.R. § 125.5(f)(1982), which provides that to be eligible, a small business bidder must perform a significant portion of the contract with its own facilities and personnel to assure the SBA that the bidder is not simply an agent.¹ In this respect, it is undisputed that had Art's received award,

¹ This Office has long held that all contracts with the Government should be in the name of the principal, although an agent may submit bids and sign contracts on behalf of a principal if properly authorized to do so. See 15 Comp. Gen. 566 (1935).

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it would have subcontracted 100 percent of the sheet metal work. Art's now asks this Office to review the SBA's action, and attempts to raise or reargue issues relating to the Navy's original determination of nonresponsibility. We affirm our decision.

Because of the SBA's conclusive authority to determine the responsibility of a small business bidder, we generally view a finding of ineligibility made by the SBA as tantamount to an affirmation of the contracting officer's original determination of nonresponsibility, and therefore not subject to our review absent a prima facie showing of fraud or bad faith. See Aero Turbine, B-200151, March 18, 1981, 81-1 CPD 208; Allied Carpet-master, Inc., B-199169, November 5, 1980, 80-2 CPD 337; Hacking Labs, B-197777, April 21, 1980, 80-1 CPD 280.

However, we have reviewed negative responsibility determinations in certain limited circumstances when the SBA's ineligibility finding may be regarded as inconclusive. For example, in United Terex, Inc., B-206090, March 22, 1982, 82-1 CPD 268, we stated that the SBA's denial of a COC on ineligibility grounds under the COC procedure did not affirm the contracting officer's original nonresponsibility determination. That exception to our general rule was based upon the fact that the small business bidder was able to introduce new evidence of its eligibility for a COC, and the SBA consequently was willing to reconsider the bidder's eligibility and had requested the contracting officer to resubmit the matter of the bidder's responsibility. We believed that it would be inequitable to allow the procedural bar of ineligibility to foreclose any review of the contracting officer's determination in the presence of the new evidence, and we concluded that the SBA's original finding of ineligibility had not constituted a final determination. See also Kari-Vac, Inc., B-210609, June 9, 1983, 83-1 CPD 637, where, in circumstances analagous to those in United Terex, Inc., we recommended that the contracting agency resubmit the matter of the bidder's responsibility to the SBA because of new information that the bidder was no longer ineligible under the COC procedure.

In the present case we see no facts which would allow us to exercise review authority in exception to our general rule. Art's has produced no new evidence that it possesses facilities or personnel sufficient enough to satisfy the "significant portion" requirement of 13 C.F.R. § 125.5(f). Further, Art's has

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made no showing of fraud or bad faith on the part of SBA officials. As a result, we must view the SBA's finding of Art's ineligibility under section 125.5(f) as tantamount to an affirmation of the contracting officer's original determination that the firm was not responsible.

The prior decision is affirmed.

for Milton J. Fowler
Comptroller General
of the United States