

# DECISION



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

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**FILE:** B-215931

**DATE:** August 28, 1984

**MATTER OF:** Surgical Instrument Company  
of America

## DIGEST:

1. Determination that a business qualifies as a manufacturer for size status purposes does not mean that it meets Small Business Administration's requirement that it perform a "significant portion" of the contract with its own facilities and personnel, making it eligible for a Certificate of Competency. Size status and eligibility for a COC are different matters involving different criteria.
2. To be eligible for a Certificate of Competency under Small Business Administration regulations, a small business must perform a "significant portion" of the contract with its own facilities and personnel. A determination by the SBA that a firm is ineligible on this basis is tantamount to an affirmation of the contracting officer's determination of nonresponsibility, and except in limited circumstances, GAO will not review it.
3. Mere allegation that denial of a Certificate of Competency results from harassment of and undue influence on the Small Business Administration by competitors does not constitute the showing of possible fraud or bad faith on the part of contracting officials that warrants GAO's review.
4. Fact that Small Business Administration awarded a Certificate of Competency to protester 4 years ago, in connection with

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contracts on which protester states it did not perform a significant portion of the work; does not establish that SBA acted improperly in finding the firm ineligible for COC in connection with current procurements. Applicable regulation, 13 C.F.R. § 125.5(b), clearly conditions eligibility on the small business's performance of a significant portion of the work with its own facilities and personnel.

Surgical Instrument Company of America protests the Small Business Administration's (SBA) determination that it is ineligible for a Certificate of Competency (COC) in connection with two solicitations issued by the Defense Personnel Support Center in Philadelphia. We dismiss the protest.

The firm objects to seemingly inconsistent determinations by the SBA's New York Regional Office. By letters dated July 10, 1984, ruling on a protest alleging that Surgical Instrument Company was not a small business because it was not a manufacturer of the items being procured and would not furnish products manufactured in the United States, the SBA found that the firm qualified as a manufacturer of the end items in question. These were forceps under invitation for bids No. DLA120-84-B-0516 and suture needle holders under invitation for bids No. DLA120-84-B-0657. The SBA also determined that the firm had no more than 500 employees. SBA therefore found that it qualified as a small business for each of the procurements.

By letter dated July 19, 1984, however, the SBA advised Surgical Instrument Company that it was not eligible for a COC because it would not perform a significant portion of the work on those contracts using its own facilities, equipment, and personnel. SBA stated that a June 28, 1984 visit to Surgical Instrument Company revealed that the operations to be performed in-house were "not substantial relative to the fabrication of either the forceps or suture needle holders."

The protester contends that this determination is conflicting and capricious, and seeks relief from our Office.

Surgical Instrument Company apparently does not understand that the SBA has ruled on two different matters--its size status and its eligibility for a COC--for which different criteria are involved. As SBA advised it, under prior Size Appeals Board decisions, it is not necessary that a firm do a majority of the work on a particular contract for it to qualify as a manufacturer when size status is being determined. For example, SBA stated, a firm may qualify even though its operations constitute a low percentage of total cost if it coordinates suppliers and performs functions that are closely related to the production process, such as testing and inspection.

The fact that Surgical Instrument Company qualified as a manufacturer for size status purposes, however, does not mean that it meets SBA's requirement, set forth at 13 C.F.R. § 125.5(b) (1984), that it perform a significant portion of work with its own facilities in order to be eligible for a COC. This is a pre-condition to SBA's consideration of any small business firm's responsibility.

Here, the record indicates, the SBA found that for both the forceps and needle holders, forgings from a subcontractor would be shipped to Pakistan, where they would be assembled, machined and formed, and substantially finished. When returned to the U.S., another subcontractor would perform heat treatment, and the needle holders would be plated by yet another subcontractor. The SBA did not consider Surgical Instrument Company's processing--ultrasonic cleaning, final buffing, masking if required, inspection, and packaging and shipping--a significant part of the production of either the forceps or the needle holders.

This is a decision our Office will not review. Under the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to determine all elements of the responsibility of a small business concern under the COC procedures. Our Office generally views a finding of ineligibility as tantamount to an affirmation of the contracting officer's original determination of nonresponsibility. As such, we will not review the matter absent

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a showing of possible fraud or bad faith on the part of contracting officials or in certain limited circumstances, when the SBA's ineligibility finding may be regarded as inconclusive. See Art's Supplies and Services--Reconsideration, B-210156.2, Sept. 23, 1983, 83-2 CPD ¶ 365.

In asserting that the SBA was arbitrary and capricious, Surgical Instrument Company alleges that the denial of the COC resulted from harassment of and undue influence on the SBA by its competitors. The protester, however, has made only that bare allegation; it has offered no evidence at all in support of the allegation. Moreover, while the protester also states that it received two COCs in 1980 in connection with contracts for plastic handled bandage scissors, for which it also did not perform a significant portion of the total work involved, this does not establish that SBA acted improperly or in bad faith in this situation, since it clearly appears that SBA's conclusion is within the provisions of 13 C.F.R. § 125.5(b). Therefore, we find that the protester has not made the necessary showing of possible fraud or bad faith that would lead us to review the COC denial.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel