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DECISION



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

FILE: B-216377

DATE: September 27, 1984

MATTER OF: American Ordnance Corporation

DIGEST:

Eligibility for a certificate of competency under Small Business Administration regulations is conditioned on a small business' performance of a "significant portion" of the contract work. An SBA determination that a firm is ineligible for a COC on this ground is tantamount to an SBA affirmation of a procuring agency's determination of nonresponsibility and, except in limited circumstances, GAO will not review it.

American Ordnance Corporation (American) protests the Army's determination that American is nonresponsible and the Small Business Administration's (SBA) determination that it is ineligible for a certificate of competency (COC) under request for proposals (RFP) No. DAAA09-84-R-0232 issued by the United States Army Armament and Munitions and Chemical Command, Rock Island, Illinois.

We dismiss the protest.

The RFP calls for the production of practice missile warheads which simulate the contour, weight and balance of the live warheads. American reports that the practice warhead consists of two-piece parts which require "sophisticated expertise and extensive capital equipment to produce." American subcontracted the manufacture and assembly of the parts reserving to itself the tasks of coordination of the subcontractors and quality control. American states that it ". . . deliberately selected this program which will not require installation and shakedown of sophisticated equipment by our organization, but which will enable entry into the government procurement market using outside facilities."

Following the Army's determination of American's nonresponsibility, American contacted SBA to apply for a COC; however, SBA advised American that it was ineligible for a COC because its intent to subcontract a major portion

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of the contract work conflicted with SBA's rule, 13 C.F.R. § 125.5(b) (1984), that a small business must perform a significant portion of the work with its own facilities in order to be eligible for a COC. The SBA advice to American was confirmed by SBA's letter of September 5, 1984.

Because of SBA's conclusive authority to determine the responsibility of a small business, we generally regard a finding of ineligibility by SBA as tantamount to an affirmation of the procuring agency's determination of nonresponsibility and, therefore, not subject to our review absent a prima facie showing of fraud or bad faith. However, we have made a limited exception to this general rule where the small business was able to introduce new evidence of its eligibility for a COC. See Art's Supplies & Services--Reconsideration, B-210156.2, Sept. 23, 1983, 83-2 C.P.D. ¶ 365.

American has not presented any evidence that it is in fact eligible for a COC under 13 C.F.R. § 125.5(b), supra, or that there was either fraud or bad faith on the part of SBA officials. Accordingly, SBA's determination of American's ineligibility under its regulation is regarded as tantamount to an affirmation of the Army's finding that American was not responsible. Surgical Instrument Company of America, B-215931, Aug. 28, 1984, 84-2 C.P.D. ¶ ____.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel