

**DECISION**



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

**FILE:** B-220463 **DATE:** November 13, 1985  
**MATTER OF:** L&R Paint Contracting

**DIGEST:**

Protest by small business firm of agency's failure to submit the matter of protester's responsibility to the Small Business Administration (SBA) for a Certificate of Competency (COC) determination is dismissed as academic because the agency has since referred the matter to the SBA whose determination to issue or not issue the COC is final.

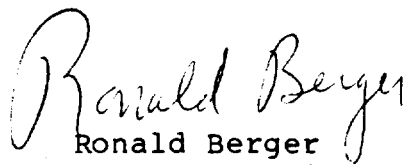
L&R Paint Contracting protests the rejection of its low bid by the Forest Service, Department of Agriculture. The Forest Service found L&R, a small business firm, to be nonresponsive and issued Purchase Order No. 43-67TO-5-76 to another bidder with a higher price, without referring the matter of L&R's responsibility to the Small Business Administration (SBA) for a Certificate of Competency (COC) determination. When L&R protested, the Forest Service ordered the awardee to suspend performance.

We dismiss this protest because the issue it presents has become academic.

The Forest Service agrees that it was improper to make an award to the higher bidder without referring the matter of L&R's responsibility to the SBA. That agency is authorized by statute, 15 U.S.C. § 637(b)(7) (1982), to certify conclusively all elements of a small business firm's responsibility. American Contract Services, B-218039.2, June 12, 1985, 85-1 CPD ¶ 674. The Forest Service has now referred the matter to the SBA and has given assurances that if a COC for L&R is issued, the purchase order award issued to the awardee will be canceled and a new purchase order will be made to L&R.

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If the SBA declines to issue a COC for L&R, L&R will be ineligible for award because the SBA's determination is final.

  
Ronald Berger  
Deputy Associate  
General Counsel