

# DECISION



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

**FILE:**

B-221753

**DATE:** April 15, 1986

**MATTER OF:**

Semtex Industrial Corp. /

## DIGEST:

1. Protest is dismissed where debarment proceeding against the protester has been initiated because, pending a debarment decision, the firm is not eligible for government contract awards.
2. Under the Small Business and Federal Procurement Competition Enhancement Act of 1984, contracting agencies must refer to the Small Business Administration nonresponsibility decisions against small business concerns even though small purchase procedures are used.

Semtex Industrial Corp. (Semtex) protests the award of 51 purchase orders from November 22 to December 31, 1985, pursuant to requests for quotations (RFQ's) issued by the Defense Logistics Agency (DLA) for electronic components. Semtex asserts that it submitted the low quotation for each solicitation, but was improperly denied the contracts.

We dismiss the protest.

The 51 purchase orders were awarded by DLA pursuant to small purchase procedures, which apply to awards anticipated as less than \$25,000 and under which an agency has broad discretion with respect to making purchases, including the authority to solicit only particular suppliers. Gradwell Company, Inc., B-216480, Feb. 8, 1985, 85-1 C.P.D. ¶ 166. DLA reports that due to past performance problems, contracting officials recommended to the agency's debarring official that Semtex, a small business concern, be debarred. As a result, Semtex was not requested to submit quotations for the solicitations in question. DLA further states that it nevertheless received and evaluated offers from Semtex for 17 of the RFQ's. DLA reports that Semtex did not submit the low quotation for three of them and, although Semtex was low for the remaining 14, the firm was not awarded contracts because the contracting officer determined that Semtex was not a responsible concern. Finally, DLA has informed our

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Office that on March 24, 1986, the DLA debarring official formally initiated debarment action against Semtex.

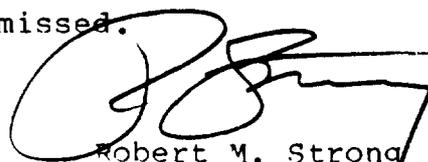
Semtex argues that DLA improperly subjected Semtex to a de facto debarment by declaring the firm nonresponsible for the 14 solicitations under which its quotations were low. Semtex complains that DLA neither made the nonresponsibility determinations on a case-by-case basis nor referred them to the Small Business Administration (SBA) for a certificate of competency (COC) decision.

Under our Bid Protest Regulations, a protesting party must have some legitimate interest in the matter before this Office will consider the protest. 4 C.F.R. § 21.1(a) (1985). A firm for which debarment has been initiated is precluded from receiving any government contract awards pending a final debarment decision. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.406-3(c)(7) (1984). We will not consider Semtex's protest on the merits because, even if we sustain the protest, Semtex is not eligible to receive awards under any of the protested solicitations. See Ikard Mfg. Co., B-213017, July 23, 1984, 84-2 C.P.D. ¶ 80.

Despite our conclusion, we find it necessary for the purpose of future procurements to point out a deficiency in the procedures followed by DLA. In its report to this Office, DLA submits that it did not refer the nonresponsibility determinations concerning Semtex to the SBA for a COC because the agency was using small purchase procedures. To justify this action, DLA relies on FAR, 48 C.F.R. § 19.602-1(a)(2), which provides that referral to SBA for COC consideration, normally required when a small business is found nonresponsible by a contracting officer, is not required in small purchases.

The exception in the FAR, however, no longer applies. Under the Small Business and Federal Procurement Competition Enhancement Act of 1984, 15 U.S.C.A. § 637(b)(7)(C) (West Supp. 1985), all nonresponsibility determinations must be referred to the SBA for review regardless of the dollar value of the contract unless the small business concern does not want its application considered. The W. H. Smith Hardware Co., B-219654, Nov. 12, 1985, 85-2 C.P.D. ¶ 536.

The protest is dismissed.



Robert M. Strong  
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