



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bio-Tek, Inc.--Reconsideration

File: B-224740.2

Date: October 21, 1986

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 the basis that this criterion is not met is tantamount to an affirmation of the agency's original determination of nonresponsibility and therefore not subject to General Accounting Office review.

DECISION

Bio-Tek, Inc. requests reconsideration of our dismissal of its protest of a determination by the General Services Administration (GSA) that it was nonresponsible under invitation for bids No. 9FCO-OKJ-N-A1303/86 for cleaning compound. We affirm the dismissal.

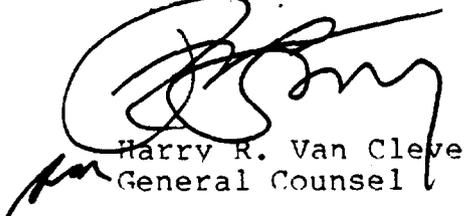
GSA determined Bio-Tek to be nonresponsible and referred the matter to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). SBA determined that Bio-Tek was ineligible for a COC because it intended to subcontract all or a major portion of the work, contrary to SBA's rule that a small business must perform a significant portion of the contract work with its own facilities and personnel to be eligible for a COC. 13 C.F.R. § 125.5(b) (1986). GSA informed Bio-Tek that because SBA had declined to issue a COC, its determination of nonresponsibility remained unchanged.

We stated in our dismissal of Bio-Tek's protest that our Office does not review SBA's refusal to issue a COC. Bio-Tek states in its request for reconsideration that it is not SBA's failure to issue a COC that it protests; it is instead GSA's finding of nonresponsibility.

Because of SBA's conclusive authority to determine the responsibility of a small business, see 15 U.S.C. § 637(b)(7) (A) (1982), we generally do not review a protest by a small business concern that a contracting agency improperly found the concern to be nonresponsible; that role by statute is essentially for the SBA to perform, which it does under its COC procedures. Moreover, we generally regard a finding of COC 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. American Ordnance Corp., B-216377, Sept. 27, 1984, 84-2 CPD ¶ 362. A limited exception to this rule exists where the small business is 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 CPD ¶ 365.

Bio-Tek has presented no evidence that it is in fact eligible for a COC, nor has it made a prima facie showing of fraud or bad faith on the part of government officials. Thus, the protest was properly dismissed.

The dismissal is affirmed:



Harry R. Van Cleve
General Counsel