

Becker
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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Osiris Distributing Inc.
File: B-260806
Date: March 24, 1985

DECISION

Osiris Distributing Inc. protests the nonresponsibility determination and subsequent referral to the Small Business Administration (SBA) by the Defense Logistics Agency under solicitation No. SPO500-95-T-D836.

We dismiss the protest because we have no basis to review an agency's decision to refer a question of contractor responsibility to the SBA.

The Small Business Act, 15 U.S.C. § 637(b)(7) (1988), gives the SBA, not our Office, the conclusive authority to review a contracting officer's determination that a small business is not responsible. Since the SBA has exclusive authority to finally determine the responsibility of a small business, our Office generally does not review either the contracting officer's decision to refer a responsibility question to the SBA,¹ or the SBA's decision to issue or deny a certificate of competency. See 4 C.F.R. § 21.3(m)(3); MRL, Inc.-Request for Recon., B-235673.4, Aug. 29, 1989, 89-2 CPD ¶ 188.

Michael R. Golden
Michael R. Golden
Acting Associate General Counsel

¹Under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(9), our Office does not consider the legal status of a firm as a regular dealer or manufacturer under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1988). By law this matter is to be decided by the contracting agency, in the first instance, subject to review by the Small Business Administration, where a small business is involved, and the Secretary of Labor. The Pratt & Whitney Co., Inc.: Onsrud Mach. Corp., B-232190; B-232190.2, Dec. 13, 1988, 88-2 CPD ¶ 588.