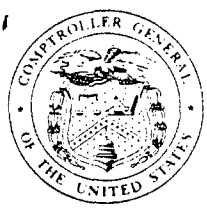


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DECISION



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

FILE: B-202818

DATE: April 24, 1981

MATTER OF: InterTechnology Corporation *DLG06567*

DIGEST:

Protest concerning small business size status of offeror is not subject to review by GAO since by law it is matter for decision by Small Business Administration.

InterTechnology Corporation (ITC) protests the award of a contract under request for proposals No. DAAH01-81-R-A123, a small business set-aside, by the United States Army Missile Command, Redstone Arsenal, Alabama (Army), to Intercon Systems Corporation (Intercon) which is subcontracting to Planning Research Corporation (PRC).

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ITC contends that Intercon does not qualify as a small business concern because of its affiliation with PRC. For that reason, and because ITC allegedly did not receive official written notice of the name of the successful offeror prior to award, ITC requests that the award be terminated.

This Office does not review size status protests since under 15 U.S.C. § 637(b) (1976) the Small Business Administration (SBA) is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes. See Advance Building Maintenance, B-193819, January 30, 1979, 79-1 CPD 72. We understand from the agency that ITC's protest has been referred to the SBA.

We note, however, that it also appears the contracting officer did not provide the preaward notice required by Defense Acquisition Regulation §§ 1-703(b)(1) (Defense Acquisition Circular No. 76-19, July 27, 1979) and 3-508.2(b) (1976 ed.), the purpose of which is to allow unsuccessful offerors the opportunity to protest the small business size status of the apparent successful offeror. Under these circumstances, should SBA rule

[Protest of Small Business Set-Aside]

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that the awardee is not a small business, the Army should consider the feasibility of terminating the contract. See R. E. Brown Co., Inc., B-193672, August 29, 1979, 79-2 CPD 164; PSI-Peripheral Support Division of Meson Corporation, B-180675, B-182214, May 23, 1975, 75-1 CPD 308.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel