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DECISION

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

FILE: B-215314 **DATE:** July 17, 1984

MATTER OF: Intertwine, Inc.

DIGEST:

1. General rule that GAO will not review a Small Business Administration decision to issue or not to issue a certificate of competency applies both to determinations of nonresponsibility and ineligibility. Only exceptions are when there is a showing of possible fraud on the part of contracting officials or when SBA has not considered all relevant information in making its decision.

2. Protest based upon alleged improprieties in a solicitation that are apparent on the face of a solicitation is untimely when filed after bid opening.

Intertwine, Inc. protests the award of a contract for maintenance of a nurse call system at Keesler Air Force Base, Mississippi. Intertwine contends that it is a responsible company and that the Small Business Administration (SBA) should not have found it ineligible for a certificate of competency (COC). Intertwine also contends that an Air Force solicitation issued following Intertwine's disqualification was improper because it eliminated a preaward training requirement contained in the original solicitation.

We dismiss the protest.

Intertwine, the incumbent contractor, was the low, responsive bidder under solicitation No. F22600-83-B-0048, issued July 19, 1983. Although the Air Force approved Intertwine's proposed maintenance subcontractor, this individual could not meet a solicitation requirement that the system maintenance person attend a 3-day training program before award of the contract. On this ground, the Air Force determined that Intertwine was nonresponsible and referred the finding to the SBA under the COC procedures.

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The SBA found Intertwine technically and financially qualified but determined that Intertwine's use of a subcontractor to perform the maintenance services made the firm ineligible for a COC. It made this decision on the basis of SBA regulations requiring that a firm perform a significant portion of the contract with its own facilities and personnel, 13 C.F.R. § 125.5(b) (1983), and did not reach the question of whether Intertwine was a responsible prime contractor.

Because the only other responsive bid was considered unreasonably high, following Intertwine's disqualification the Air Force canceled the solicitation. On February 27, 1984, the agency issued a new one, No. F22600-84-B-0012, which allowed the successful bidder to send its maintenance person to training school after award. Intertwine unsuccessfully bid on the new contract. (The Air Force informally advises us that it was fifth-low.)

Intertwine first contends that the SBA should have awarded it a COC because, at the time of the procurement, its maintenance subcontractor already had 14 months of experience on the nurse call system and because Intertwine would be held responsible for all the subcontractor's actions.

As a general rule, our Office will not review an SBA decision to issue or not to issue a COC. This is because under the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), SBA has conclusive authority to determine all elements of a small business firm's responsibility. The only exceptions--applicable both to determinations of nonresponsibility and ineligibility--are when there is a showing of possible fraud on the part of contracting officials or when SBA has not had all relevant information available at the time of making its decision. See Art's Supplies & Services--Reconsideration, B-210156.2, Sept. 23, 1983, 83-2 CPD ¶ 365, and cases cited therein. Neither exception applies here.

Moreover, we point out that in any event the protest against the ineligibility determination is untimely. Our Bid Protest Procedures provide that a protest must be filed no later than 10 days after the basis for the protest is

known or should have been known. 4 C.F.R. § 21.2(b)(2) (1984). In this case, the protester knew the basis for its protest on or shortly after January 17, 1984, the date of the SBA letter advising Intertwine that it was not eligible for a COC, but did not protest until May 22, 1984.

As for Intertwine's contention that the Air Force's subsequent solicitation was unfair--and therefore improper--because it eliminated the preaward training requirement, our procedures require that protests based upon alleged improprieties that are apparent on the face of a solicitation be filed before bid opening. See 4 C.F.R. § 21.1(b)(1).

The elimination of the requirement that maintenance persons attend training school before award was apparent on the face of the second solicitation. Since Intertwine did not protest this change until after it had bid and lost, its protest on this basis also is untimely, and we will not consider it.

The protest is dismissed.

Harry R. Van Cleve
Acting General Counsel