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**DECISION**



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

**FILE:** B-217515, B-217516      **DATE:** February 7, 1985  
**MATTER OF:** A.R.E. Manufacturing Co., Inc.

**DIGEST:**

When small business is found to be nonresponsible and the Small Business Administration refuses to issue a certificate of competency, GAO will not review this refusal unless the protester makes a prima facie showing of bad faith or demonstrates that information vital to the nonresponsibility determination was not considered.

A.R.E. Manufacturing Co., Inc. (ARE), protests an award to any other firm under invitations for bids Nos. DAAJ10-84-B-A163 and DAAJ10-83-B-A222 issued by the United States Army Troop Support Command, St. Louis, Missouri. The Army determined that ARE was nonresponsible and the Small Business Administration (SBA) subsequently declined to issue a certificate of competency (COC) to ARE. We dismiss the protest.

ARE alleges that SBA did not consider relevant material and did not adequately investigate representations made by the contracting officer and other Army representatives in reaching the decision on the COC. Thus, ARE argues that the SBA's decision was improper because it was based on misrepresentations about its responsibility.

Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to determine the responsibility of small businesses by issuing or refusing to issue a COC. Unless a protester makes a prima facie showing of bad faith or fraud, or demonstrates that information vital to a non-responsibility determination was not considered, our Office is not empowered to review SBA determinations, to require them to issue a COC, or to reopen a case when a COC has been denied. Martin Tool and Die Incorporated, B-208796, Jan. 19, 1983, 83-1 C.P.D. ¶ 70.

Moreover, to establish bad faith, the courts and our Office require the presentation of virtually irrefutable proof that government officials had a specific and malicious

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B-217515  
B-217516

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intent "to injure the protester." Cal Pacific Fabricating, Inc., B-214946, May 22, 1984, 84-1 C.P.D. ¶ 552. Here, ARE's allegations, without any other supporting evidence, do not satisfy the necessary standard for review.

Finally, ARE states that it presented evidence of the misrepresentation to the SBA after the denial of the COC but the SBA still refused to reverse its ruling. Even if we found that ARE had made the above prime facie showing, our Office would only request SBA to reopen the case and review its determination, which the SBA has already done.

The protest is dismissed.

  
Comptroller General  
of the United States