



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Custom Research, Inc.--Request for
Reconsideration

File: B-238976.2

Date: June 14, 1990

Burt Bell, for the protester.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Prior dismissal of a small business protest against
contracting officer's nonresponsibility determination is
affirmed where the matter was referred to the Small Business
Administration which has conclusive authority to determine a
small business's responsibility by issuing or refusing to
issue a certificate of competency.

DECISION

Custom Research, Inc., requests reconsideration of our
March 20, 1990, dismissal of its protest under invitation
for bids (IFB) No. DLA120-87-R-1822, issued by the Defense
Logistics Agency (DLA) for blood bank freezers. Custom
challenges the agency's finding of nonresponsibility and
referral of Custom to the Small Business Administration
(SBA) for possible issuance of a certificate of competency
(COC). SBA ultimately refused to issue the firm a COC.

We affirm the dismissal.

In its initial protest, Custom asserted that it had adequate
production facilities and financial capability to perform
the contract and therefore the agency's nonresponsibility
determination and referral to SBA was erroneous. We
dismissed the protest because we will generally not review a
nonresponsibility determination where a small business is
concerned since by law the SBA has conclusive authority to
determine the responsibility of a small business by issuing
or failing to issue a COC. See 15 U.S.C. § 637(b)(7)(A)
(1988).

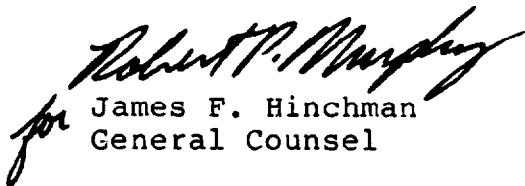
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In its request for reconsideration, Custom again argues that the agency should not have determined the firm to be nonresponsible or referred its determination to SBA. Custom contends that we should not have deferred to the SBA COC procedure because it views that procedure as irrelevant since in its judgment there was no basis for an initial nonresponsibility determination by DLA.

Custom misunderstands the purpose of the COC process. It is provided by law to protect small businesses from arbitrary nonresponsibility determinations made by procurement agencies. Custom's complaint is exactly that--that the determination that it is not responsible is unwarranted. We reiterate that by law it is the SBA, not our Office, that has the authority to review a contracting officer's negative finding of responsibility and then to determine conclusively a small business concern's responsibility. Eagle Bob Tail Tractors, Inc., B-232346.2, Jan. 4, 1989, 89-1 CPD ¶ 5. Our Office will not review such matters unless the protester makes a showing that government officials may have acted fraudulently or in bad faith or failed to consider vital information bearing on the firm's responsibility. Franklin Wire and Cable Co.--Recon., B-218557.2 et al., June 5, 1985, 85-1 CPD ¶ 644. Here, Custom did not allege and there is no indication in the record that SBA acted in bad faith or failed to consider relevant information in connection with the denial of the COC.

Since the contracting officer's nonresponsibility decision is subject to a conclusive determination by the SBA, we will not consider Custom's protest of the contracting officer's determination.

The prior dismissal is affirmed.


for James F. Hinchman
General Counsel