

DECISION

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

FILE: B-220545
MATTER OF: Ray, Inc.

DATE: November 20, 1985

DIGEST:

As a general rule, GAO will not review a contracting officer's determination of a small business bidder's nonresponsibility since the Small Business Administration has statutory authority to determine conclusively whether a small business firm is responsible.

Ray, Inc., a small business, protests the contracting officer's determination that Ray is nonresponsible under Defense Industrial Supply Center request for quotations No. DLA500-85-Q-BMX2, a small purchase. The agency advises that this matter has been referred to the Small Business Administration (SBA) for consideration under the certificate of competency (COC) procedures.

The SBA has statutory authority to review a contracting officer's determination of a small business concern's nonresponsibility and to determine conclusively the responsibility of the concern by issuing or declining to issue a COC. 15 U.S.C. § 637(b)(7)(A) (1982). Consequently, we will not undertake an independent review of the contracting officer's nonresponsibility determination, since such review would be tantamount to a substitution of our judgment for that of the SBA. Apollo Bedding, Inc., B-218502.2, May 17, 1985, 85-1 CPD ¶ 570.

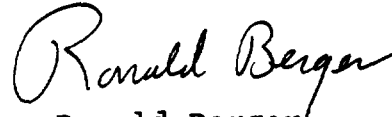
We note that the agency cites the Federal Acquisition Regulation, 48 C.F.R. § 19.502-1(a)(2) (1984), for the proposition that referral to the SBA is not necessary if small purchase procedures are being used, and states it nevertheless elected to refer its nonresponsibility determination to SBA. We point out that section 401 of the recently enacted Small Business and Federal Procurement

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Competition Enhancement Act of 1984, Pub. L. No. 98-577, 98 Stat. 3066, 3079 (1984), requires that contracting agencies refer nonresponsibility determinations to SBA even where small purchase procedures are utilized. Sess Construction Co., 64 Comp. Gen. 355 (1985), 85-1 CPD ¶ 319.

The protest is dismissed.



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