

DECISION

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

60117

FILE: B-184428

DATE: November 4, 1975

MATTER OF: Collins Machinery Corporation

9 7577

DIGEST:

Where on the basis of negative preaward survey, caused by low bidder's failure to cooperate with survey team, low bidder is determined nonresponsible, contracting officer's determination will not be questioned since there has been no showing it was reached in bad faith or without reasonable basis.

Invitation for bids (IFB) No. N00207-75-B-0036 was issued by the United States Naval Air Station, Jacksonville, Florida, for the procurement of one Vapor Degreaser. Collins Machinery Corporation (Collins) was the low bidder. In response to a protest from Randall Manufacturing Company, Inc. (Randall), the second low bidder, a preaward survey of Collins was performed pursuant to Armed Services Procurement Regulation (ASPR) § 1-905.4 (1974 ed.). The survey which was conducted by the Defense Contract Administration Service Region (DCASR) recommended, for reasons later discussed, "no award." Based upon the negative preaward survey the contracting officer determined that Collins was not a responsible prospective contractor because of the inability of Collins to comply with the required delivery schedule, ASPR § 1-903.1(ii) (supra), and because it was found to lack capacity since it refused to supply certified financial data to the survey team.

Even though Collins is a small business, a certificate of competency (COC) was not requested from the Small Business Administration (SBA), since the proposed award to Collins (\$9,450) was under \$10,000, and the request for a COC was, therefore, within the discretion of the contracting officer. ASPR § 1-705.4(c) (supra). In this regard, the record indicates that the SBA was initially contacted for a COC but later the contracting officer withdrew the request due to the small amount of the contract. Accordingly, award was subsequently made to Randall as the next low bidder. Collins, thereafter, filed this protest with our Office.

Collins alleges that the local DCASR made unreasonable demands in both time and cost as related to the preaward survey. Further, Collins states that it provided the requested financial information and proof that it could deliver the product on time. Lastly, Collins contends that the award to Randall was made without a preaward survey or any similar justification.

The record before our Office shows that in determining Collins to be nonresponsible the contracting officer relied on ASPR § 1-902 (supra) which states that "* * * A prospective contractor must demonstrate affirmatively his responsibility, * * *." The local DCASR requested updated financial statements in connection with the preaward survey. Only DCRC Form 1049, without the required attachments or certified statements, was received from Collins. The DCASR, then, contacted Collins concerning its failure to submit the missing documents. After Collins failed to respond to this further request, the DCASR recommended that no award be made to Collins since it did not cooperate in the preaward survey. On the basis of this negative finding in the preaward survey the contracting officer determined that Collins had not affirmatively demonstrated its responsibility. ASPR § 1-905.4(a) (supra).

This Office has consistently held that it is the duty of the contracting officer to determine the responsibility of a prospective contractor. In making the determination, the contracting officer is vested with a considerable degree of discretion. Our Office will not substitute its judgement in such cases and will uphold the contracting officer's determination of nonresponsibility unless it is shown to be inconsistent with the information before him or to have been made in bad faith. Solar Laboratories, Inc., 51 Comp. Gen. 703, 709 (1972); B-179731, February 25, 1974, 74-1 CPD 99.

In light of the information submitted by Collins in response to the preaward survey, we agree with the contracting officer that Collins failed to adequately demonstrate its responsibility. It should be noted that the determination of nonresponsibility resulted predominantly from Collins refusal to cooperate in the preaward survey. Therefore, we feel the contracting officer had a reasonable basis in fact for determining Collins to be nonresponsible.

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As to Collins' contention that award to Randall was made without proper justification, this office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Since neither exception permitting our review is present here, we will not consider the affirmative determination of Randall's responsibility.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States