

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

25985

**FILE:** B-204787.2**DATE:** August 15, 1983**MATTER OF:** Beacon Winch Company--Request for  
Reconsideration**DIGEST:**

Protest questioning affirmative determination of responsibility is denied as protester has failed to make a showing of fraud on part of procuring officials.

Beacon Winch Company has requested that we reconsider that portion of our decision Beacon Winch Company, B-204787, October 9, 1981, 81-2 CPD 299, in which we refused to consider its allegations that the awardee under Invitation for Bids (IFB) No. DAAE07-81-B-5173, issued by the Department of the Army, did not have the ability to perform the contract. We did so because we do not generally review affirmative determinations of responsibility except where there is a showing of possible fraud or bad faith on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Beacon now contends that information received pursuant to a Freedom of Information Act request following the issuance of our decision establishes that the contracting officer's determination that the awardee was responsible was an abuse of discretion tantamount to fraud or bad faith. On the basis of the material presented in the reconsideration request, we have considered the merits of the contention. As discussed below, however, we find no basis to sustain the protest.

The IFB was issued by the Army for five different items representing three different type winches for either overseas or domestic delivery. The three lowest bids received were from Teppert Tool & Engineering, Jechura's Military Equipment, and Beacon. Teppert was the apparent low bidder for items 2 and 3. Jechura was the apparent low bidder for items 1, 4, and 5, and was second low for items 2 and 3. Beacon was the apparent third low bidder on all five items.

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Following bid opening, the Army initiated preaward surveys of the three low bidders. The preaward survey conducted by the Defense Contract Administration Services Management Area (DCASMA)-Hartford recommended that Beacon be considered for an award. A preaward survey conducted by DCASMA-Detroit recommended against an award to Teppert because of Teppert's failure to cooperate with the preaward survey team. Since Teppert is a small business the question of Teppert's responsibility was referred to the Small Business Administration (SBA); however, Teppert declined to file for a certificate of competency.

Another survey conducted by DCASMA-Detroit recommended against an award to Jechura because of an unsatisfactory financial capability evaluation. (The preaward survey found Jechura satisfactory in all other respects.) The contracting officer, based on the preaward survey, found Jechura non-responsible and since Jechura also is a small business, referred the question of Jechura's responsibility to the SBA. Thereafter, Mr. Jerome Jechura, the sole proprietor of Jechura, submitted additional information regarding his financial capability to DCASMA-Detroit and the contracting officer. Based on this information, the contracting officer requested DCASMA-Detroit to conduct a second preaward survey of Jechura. After considering revised financial information submitted by Jechura, including letters of credit from four suppliers (including Teppert), and a request by Jechura for progress payments, DCASMA-Detroit made a favorable recommendation regarding an award to Jechura. Thereafter, a contract was awarded to Jechura for all five items.

Beacon maintains that the contracting officer's finding that Jechura was responsible was an abuse of discretion tantamount to fraud or bad faith. Beacon's arguments essentially revolve around two main contentions. First, Beacon contends that the preaward surveys relied upon by the contracting officer to find Jechura responsible were so blatantly defective that reliance upon them by the contracting officer was tantamount to fraud or bad faith. Second, Beacon asserts that the contracting officer's willingness to find Jechura financially responsible constituted a gross abuse of discretion tantamount to bad faith. We find the first argument to be untimely and the second one to be without merit.

First, Beacon argues that the preaward surveys demonstrate on their face Jechura's nonresponsibility in the area of production, delivery and quality assurance. Beacon has

presented a detailed analysis in an effort to demonstrate the alleged insufficiency of the preaward surveys in these areas.

Beacon did not raise its arguments regarding the alleged flaws in the preaward surveys concerning responsibility elements other than financial capability until 3 months after it received the preaward surveys. Our Bid Protest Procedures require that protests be filed no later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1983). Therefore, this aspect of the protest is untimely.

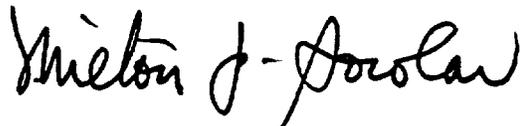
With respect to the second main contention, Beacon asserts that the contracting officer's decision was based on Jechura's receiving from Teppert financial assistance and certain equipment necessary to perform the contract. Beacon argues that the contracting officer abused his discretion in relying upon this assistance because he was aware of information which clearly established that Jechura and Teppert were affiliated. Beacon maintains that the contracting officer was, therefore, prohibited by Defense Acquisition Regulation (DAR) § 1-904.2 from considering Teppert's offer of financial assistance in determining the responsibility of Jechura. Among the evidence Beacon contends the contracting officer was aware of and which establishes that Jechura and Teppert are affiliated are the facts that 1) the preaward survey indicated that Jechura is owned by the son of the president of Teppert; 2) the fact that the preaward survey indicated that Dunn & Bradstreet reported Jechura's creditors under Teppert's listing "because [Jechura's] business is reported as Teppert"; and 3) stationery used by Jechura to correspond with the contracting officer to request a reexamination of Jechura's responsibility described Jechura's predecessor company, Ordnance Specialties Co., as a "[d]ivision of Teppert Tool & Engineering." Beacon finally argues that the evidence clearly establishes that Jechura and Teppert are engaged in an improper infusion of assets to make Jechura appear responsible when it is not.

We see nothing improper with the contracting officer's actions here. First the contracting officer clearly acted within the bounds of his discretion when he requested that DCASMA reexamine Jechura's financial capacity. This was entirely appropriate since a responsibility determination should be based on the most current information available to

the contracting officer. Inflated Products Company, Inc., B-189115, October 31, 1977, 77-2 CPD 334; Henry Spen & Company, Inc., B-183164, January 27, 1976, 76-1 CPD 46.

In addition, we see no impropriety here even assuming that in fact 1) the contracting officer based his determination that Jechura was responsible on Jechura's receiving financial and technical assistance from Teppert, 2) Teppert and Jechura are affiliated, and 3) the contracting officer was or should have been aware of their relationship. Contrary to Beacon's assertions, DAR § 1-904.2 does not prohibit contracting officers from considering financial assistance available to a prospective contractor from an affiliated firm when determining whether the prospective contractor is responsible. DAR § 1-904.2 merely states that "[a]ffiliated concerns \* \* \* shall be considered separate entities in determining whether the one to perform the contract meets applicable standards for a responsible contractor." All this means is that a potential contractor should not be found responsible if otherwise nonresponsible, merely because an affiliate is responsible. In fact, we have recognized that the contracting officer may consider evidence that an affiliated concern will guarantee a bidder's financial or performance capability in making a responsibility determination. See Pope, Evans and Robbins, Inc., B-200265, July 14, 1981, 81-2 CPD 29.

The protest is denied.

for   
Comptroller General  
of the United States