



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Huntington Construction Inc.--Request for
 Reconsideration
File: B-224612.2
Date: October 8, 1986

DIGEST

General Accounting Office will not review a contracting officer's determination of nonresponsibility with respect to a small business concern since the Small Business Administration is empowered by statute to determine conclusively whether a small business is responsible.

DECISION

Huntington Construction Inc. (HCI), a small business, requests that we reconsider our dismissal of its protest under invitation for bids No. F02601-86-B-0034 issued by the Department of the Air Force. The Air Force rejected HCI's bid after the contracting officer determined HCI to be nonresponsible. Thereafter the question of HCI's responsibility was referred to the Small Business Administration (SBA), which subsequently declined to issue a certificate of competency (COC). We dismissed the protest because our Office will not review SBA determinations concerning the issuance of a COC. 4 C.F.R. § 21.3(f)(3) (1986).

HCI states that it did not wish us to review the SBA's refusal to issue a COC. Rather, HCI requests that we consider the correctness of the contracting officer's original nonresponsibility determination and alleges that the Air Force acted in bad faith by furnishing inaccurate information to the SBA.

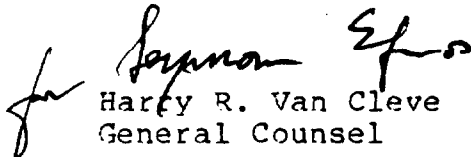
When an agency makes a determination that a small business firm is nonresponsible, it is required by law to refer that determination to the SBA for consideration under SBA's COC procedures. The SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and SBA's determination to issue or refuse to issue a COC is conclusive with respect to all aspects of a

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small business concern's responsibility. 15 U.S.C. § 637(b) (1982); Federal Acquisition Regulation, 48 C.F.R. subpart 19.6 (1985); Building Maintenance Specialists, B-220966, Jan. 14, 1986, 86-1 CPD ¶ 39. Accordingly, since the SBA has conclusive jurisdiction over these matters under its COC procedures, we will not review an agency's determination that a small business is nonresponsible.

With respect to HCI's allegation that the Air Force acted in bad faith by not providing the SBA with all relevant information concerning its past performance record, we note that to establish bad faith, a protester must submit virtually irrefutable proof that government officials had a specific and malicious intent to injure the protester. Midwest Security Agency, Inc., B-222424, Apr. 7, 1986, 86-1 CPD ¶ 345. Although the record shows some disputes between the Air Force and HCI concerning HCI's performance under past contracts, HCI has submitted no evidence which shows that the Air Force presented the SBA with information concerning HCI that it knew to be false or misleading. Moreover, once the contracting officer has submitted to the SBA adequate information to show that the bidder is nonresponsible, it is incumbent on the bidder to submit all relevant information and prove through its COC application to the SBA that it is responsible. HCI had the burden and the opportunity to provide any information about its past performance in making its application for a COC. Sealtech, Inc., B-221584.3, Apr. 16, 1986, 86-1 CPD ¶ 373.

The prior dismissal is affirmed.


Harry R. Van Cleve
General Counsel