



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Spheres Company
File: B-225755
Date: June 5, 1987

DIGEST

1. Burden of showing that Small Business Administration (SBA) acted in bad faith is not met where the record shows that the SBA granted the protester two extensions to the deadline for filing for a certificate of competency, and the protester's assertion that the SBA granted a further extension and failed to honor it is unsupported.
2. The granting of an extension for filing a certificate of competency application is a matter within the discretion of the Small Business Administration and the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, is controlling.

DECISION

Spheres Company protests the Small Business Administration's (SBA's) closing of the file on its application for a certificate of competency (COC) in connection with request for proposals (RFP) No. DAHC77-86-R-0089, issued by the U.S. Army Support Command, Fort Shafter, Hawaii. Spheres, a small disadvantaged business, alleges that the SBA failed to allow sufficient time for completion of the application and acted in bad faith in refusing to honor an extension to which it had agreed.

We deny the protest.

The solicitation was for a comprehensive information and counseling program, including a 24-hour telephone hotline, for problem-solving assistance for service members and their families. The Army initially determined that Spheres, the lowest of three offerors, was nonresponsible, based on a determination of unsatisfactory capacity, particularly with regard to the firm's experience and that of the personnel it planned to hire.

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On January 28, 1987, in accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.602-1 (1986), the Army referred the matter to the SBA for a COC determination. After leaving a telephone message for Spheres on February 2, the SBA sent the firm a COC application package on February 5; the record indicates that the firm received it on February 9. The application required, among other things, credentials such as transcripts, diplomas, and certificates for prospective employees. The SBA initially established a filing deadline of February 12 and advised the Army that it would reach a decision on the COC by February 24.

Certain facts concerning the alleged extension are in dispute. The SBA maintains that a representative of the protester telephoned the COC specialist assigned to the matter on February 10, complaining about the number of forms required. The specialist states that he granted an extension for the capacity portion of the COC application until February 13. This date coincided with the deadline for SBA receipt from Spheres of another COC application on a referral from the Navy. The SBA also maintains that the specialist orally agreed to an extension until February 18 for the credentials portion of the COC application. According to the SBA, the time for submission of other materials could not be further extended because the SBA had to analyze them, make a field visit, and prepare a report before an internal COC meeting on February 19. Because Spheres did not comply by the required dates, the SBA closed its file on the case at noon on February 18.

According to the protester, on the afternoon of February 18 it called the SBA to confirm a February 19 meeting, which the firm alleges that the agency had agreed would be held for purposes of submission of information on both its pending COC applications. Upon being told that the SBA had closed the file, Spheres requested reopening. Although the SBA then sought an extension for COC processing from the Army, the Army denied the request. Accordingly, the SBA notified the Army and Spheres that the file would not be reopened.

Spheres complains that the SBA provided insufficient time to develop and submit all of the data required for the COC application. Further, Spheres complains that although the SBA agreed to the February 19 extension, it refused to honor it. Spheres alleges that the SBA acted in bad faith and prevented it from having a fair opportunity to apply for a COC. In its protest to our Office, Spheres requests that it be given additional time to assemble the required data and that the COC file be reopened.

Under applicable procurement regulations, the SBA will take specific actions in response to a COC referral within 15 business days (or longer if the SBA and the contracting agency agree). FAR, 48 C.F.R. § 19.602-2(a). If the SBA has not issued a COC within this period, the contracting officer is free to make award to another firm. Id., § 19.602-4(c). By requiring that award be withheld and providing for an expeditious COC determination, the regulations seek to balance the interest of the small business concern in obtaining an independent review of its ability to perform a contract with the interest of the government in proceeding with the acquisition. See Lasanta Sportswear, Inc., B-218893 et al., June 3, 1985, 85-1 CPD ¶ 634.

Our Office reviews COC determinations when a protester's submission indicates that SBA action on a referral may have been taken fraudulently or in bad faith or that the SBA disregarded information vital to a responsibility determination. ESCO Air Filters, B-225552.2, Mar. 12, 1987, 87-1 CPD ¶ 279; The Pepperdine Corp., B-225490, Dec. 24, 1986, 86-2 CPD ¶ 717. To establish bad faith, the courts and our Office require virtually irrefutable proof that government officials had a "specific and malicious intent" to injure the protester. Marine Industries Northwest, Inc. et al., 62 Comp. Gen. 205 (1983), 83-1 CPD ¶ 159; A.R.E. Manufacturing Co., Inc., B-217515, et al., Feb. 7, 1985, 85-1 CPD ¶ 162.

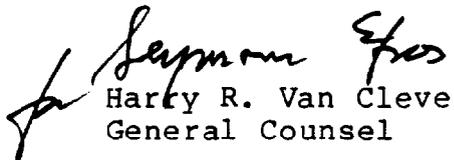
Spheres has introduced no probative evidence of bad faith other than its bare chronology of the events in question, and it couches these in indefinite terms. According to Spheres, it was agreed that it would be appropriate for the firm to meet with SBA personnel on "approximately February 19," and the date was to be confirmed. Spheres also describes the date as "estimated" and "tentative." The SBA, however, has submitted an affidavit from the COC specialist which states that he granted an extension until February 13 for submission of the capacity portion of the COC application and until February 18 for the credentials. Thus, on this record we must conclude that Spheres has not met its burden of proving that there was an extension until February 19. See Patton Electric Co., Inc., B-194565, Aug. 27, 1979, 79-2 CPD ¶ 154.

Moreover, there is no requirement that a small business be granted an extension; the decision whether to grant an extension is solely within the discretion of the contracting agency and the SBA, and the offeror's interest is not controlling. General Painting Co., Inc., B-219449, Nov. 8, 1985, 85-2 CPD ¶ 530; Lasanta Sportswear, Inc., supra. The deadlines set by the SBA were consistent with its obligation

to take action on the COC referral within 15 business days; the SBA received the request from the Army on February 2 and advised the Army that it would reach a decision by February 24. The SBA thus allowed itself approximately a week to analyze the capacity information and less than that for a review of credentials. While Spheres alleges that the time between receipt of the application on February 9 and the initial deadline of February 12 was unreasonable, as indicated above, the SBA left a telephone message, advising Spheres of the COC referral, on February 2. The record indicates that the SBA's Seattle Regional Office has dealt with Spheres on at least seven other COC referrals since 1980, so the firm should have known what type of information it would be required to submit.

We therefore have no legal reason to object to the actions of the SBA or the Army. Under these circumstances, the detailed responsibility-type information that Spheres submitted to our Office in its comments on the protest is not relevant.

The protest is denied.


Harry R. Van Cleve
General Counsel