

Ruppert



The Comptroller General  
of the United States

Washington, D.C. 20548

136 088

**Decision**

Matter of: E.J. Karnavas Corporation

File: B-230617; 230617.2

Date: June 7, 1988

**DIGEST**

1. Allegations challenging nonresponsibility determination by agency and refusal by Small Business Administration to issue a certificate of competency are untimely where not raised within 10 working days after protester should have known of allegedly improper actions.
2. Allegation challenging contracting agency's nonresponsibility determination and refusal by the Small Business Administration (SBA) to issue a certificate of competency are without merit, where there is no showing of fraud or bad faith on the part of the contracting officials or that the SBA failed to consider vital information bearing on the firm's responsibility.
3. Agency's nonresponsibility determination does not amount to de facto debarment; a finding of nonresponsibility, unlike a debarment, does not prevent a firm from competing for other government contracts and receiving awards if the firm is otherwise qualified and convinces the agency that it has corrected its past problems.

**DECISION**

E.J. Karnavas Corporation protests the rejection of its bid under invitation for bids (IFB) No. DABT35-88-B-0003, issued by the Department of the Army, on the basis that Karnavas is a nonresponsible bidder. Karnavas also protests the Small Business Administration's (SBA's) refusal to issue a certificate of competency (COC).

We dismiss the protests.

Karnavas submitted the apparent low bid to provide maintenance and repair of family housing at Fort Dix, New Jersey for the period of February 1, 1988, through January 31, 1989. The contracting officer, however, rejected the bid

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after finding Karnavas to be nonresponsible on the basis of a prior unsatisfactory performance record and failure to comply with required or proposed performance schedules. Because Karnavas is a small business concern, the agency referred the nonresponsibility determination to the SBA for consideration under its COC procedures, as required by 15 U.S.C. § 637(b)(7) (1982). Based upon Karnavas' subsequent COC application, and after interviewing approximately 15 individuals familiar with Karnavas' performance under prior contracts, reviewing written records relating to that performance, and inspecting work previously completed by Karnavas, an SBA industrial specialist recommended rejecting the application for the COC on the grounds that Karnavas had performed poorly on other government contracts, had not demonstrated its ability to meet quality control requirements, and had displayed deficiencies in planning and management. In particular, the industrial specialist cited negative reports on Karnavas' performance under three recent contracts for maintenance and repair at Fort Dix. Contracting officials had recommended that Karnavas receive unsatisfactory performance evaluation ratings under all three contracts; a final unsatisfactory rating subsequently was awarded for one contract, an interim unsatisfactory rating was awarded for a second contract, and the final rating for the third contract was pending.

After a further review of the record, SBA officials on February 5 declined to issue a COC; the SBA stated in the copy of its decision provided to Karnavas on February 8 that it had concluded that Karnavas' access to subcontractors, and its performance record, production capability and quality assurance were unsatisfactory. Although the letter afforded Karnavas an opportunity to request a meeting with the SBA to discuss the reasons for the denial, it advised the firm that the sole purpose of such a meeting would be to enable Karnavas to improve its position for future procurements and that the meeting would not result in a reversal of SBA's findings for this procurement.

Subsequently, in a protest filed March 7, Karnavas alleged that the SBA had failed to consider information relating to the firm's prior performance and had relied on incorrect information in assessing Karnavas' proposed quality assurance program. Karnavas later supplemented its protest to challenge the contracting officer's original nonresponsibility determination. Karnavas seems to suggest that the agency and SBA proceeded in bad faith, improperly ignoring favorable reports on Karnavas' past performance.

We find Karnavas' challenge to the Army's nonresponsibility determination and the SBA's refusal to issue a COC to be untimely. Our Bid Protest Regulations generally require

that protests be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Karnavas' January 19 COC application evidences its awareness that the Army's nonresponsibility determination was based primarily upon the unsatisfactory performance evaluations for the Fort Dix contracts. Similarly, upon receipt on February 8 of written notification of the SBA's refusal to issue a COC, citing among other things deficiencies in Karnavas' performance record and quality assurance, Karnavas should have known that the SBA had come to conclusions similar to the contracting agency's. Karnavas thus should have been aware of the basis for its protest of the agency's nonresponsibility determination and the SBA's refusal to issue a COC no later than February 8, more than 10 days prior to our receipt of the firm's protest.

Although we find the protest untimely, we have a fully developed record because the untimeliness of the protest was not apparent from the initial protest submission. We point out that this record does not establish fraud or bad faith on the part of contracting officials or that the SBA failed to consider vital information bearing on the firm's responsibility.

The record shows that Army and SBA officials were aware, as Karnavas points out, that Karnavas' performance under other contracts had been more favorably evaluated than its performance under the three Fort Dix contracts; both agencies simply concluded that the satisfactory performance did not offset the unsatisfactory ratings under recent contracts for repair and maintenance, the services being procured under the current solicitation. Neither Karnavas' disagreement with the weight accorded the unfavorable evaluations of its performance under the Fort Dix contracts, nor any other evidence in the record, establishes bad faith, *i.e.*, is virtually irrefutable proof that government officials had a specific and malicious intent to injure the protester. See Inter-Continental Equipment, Inc., B-230266, supra.

Karnavas also has not identified any vital information available to but not considered by the SBA that the protester did not also have an opportunity to submit. In this regard, by the time Karnavas submitted its COC application, the firm already had submitted a rebuttal to the unsatisfactory rating under one of the Fort Dix contracts, had been afforded the opportunity to submit a rebuttal under a second Fort Dix contract, and was aware that contracting officials had found fault with its performance under the third contract. In addition, Karnavas had been requested by the contracting officer to provide references for recent work performed by the firm and was instructed by the SBA to

include in the COC application a list of all contracts completed within the previous 12 months. See generally Inter-Continental Equipment, Inc.--Reconsideration, B-230266.3, Apr. 6, 1988, 88-1 CPD ¶ 343 (burden is on contractor to submit all relevant information proving it is responsible when applying for a COC).

Karnavas protested on March 30 that the finding of nonresponsibility was tantamount to a "de facto" debarment. This ground for protest is untimely, since it was raised more than 10 working days after the protester knew (no later than its January 19 COC application) that the contracting officer had found it nonresponsible. In any case, the allegation is without merit. A finding of nonresponsibility pertains only to the contract in question and does not bar the firm from competing for future contracts and receiving awards if it is otherwise qualified and convinces the agency that the firm's past problems have been corrected. Firm Reis GmbH, B-224544, et al., Jan. 20, 1987, 87-1 CPD ¶ 72. The record does not indicate that Karnavas will be precluded from competing for future contracts.

The protests are dismissed.

*for*   
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General Counsel