



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vanguard Industries, Inc.
File: B-233490.2
Date: December 21, 1988

DIGEST

Allegations challenging contracting agency's nonresponsibility determination and refusal by the Small Business Administration to issue a certificate of competency are not for review by General Accounting Office where the protester asserts, but there is no evidence showing, possible fraud or bad faith on the part of government officials.

DECISION

Vanguard Industries, Inc., requests the we reconsider our November 7, 1988, dismissal of its protest under Department of the Army invitation for bids (IFB) No. DAAE07-88-B-J318, challenging the agency's determination of the firm's nonresponsibility, and the Small Business Administration's (SBA's) subsequent refusal to issue a certificate of competency (COC). We deny the request.

In its original protest, Vanguard asserted that the Army's and the SBA's actions in finding the firm nonresponsible constituted fraud and bad faith because the determination allegedly was based on unpublicized policies that operated to give undue weight to material deficiency reports under prior contracts; Vanguard believed this was the reason for its being found nonresponsible. Vanguard also alleged that it had been "blacklisted" by the Army due to past protests.

The SBA has conclusive authority to determine a small business concern's responsibility by reviewing an agency's nonresponsibility determination, under the COC procedure. 15 U.S.C. § 637(b)(7) (1982). We dismissed Vanguard's protest in a notice stating that our Office does not review an SBA refusal to issue a COC; under our Bid Protest Regulations, we will review such matters only where there is a showing of possible fraud or bad faith on the part of government officials. 4 C.F.R. § 21.3(m)(3) (1988).

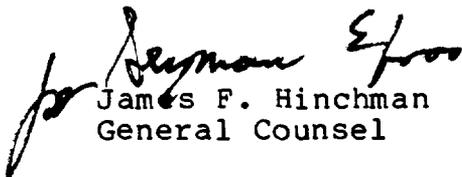
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Vangard argues in its reconsideration request that its protest alleging fraud and bad faith merited our consideration under this exception. We disagree.

In providing that there must be a "showing" of possible fraud or bad faith as a prerequisite to our review, our Regulations contemplate more than just a bald, unsupported assertion; facts must be presented in the protest that reasonably indicate that the government actions complained of were motivated by a specific and malicious intent to harm the protester. See Ingram Barge Co., B-230672, June 28, 1988, 88-1 CPD ¶ 614. Vangard's protest did not meet this standard.

While the protester asserted that the Army's nonresponsibility determination and the SBA's denial of a COC were made fraudulently or in bad faith, the mere fact that these determinations allegedly were based on unpublicized policies--the action Vangard pointed to in support of its assertion--does not evidence possible fraud or bad faith. There was no further assertion or evidence that the agencies developed or applied any policies for the express purpose of denying Vangard the award, or otherwise to harm the protester. Similarly, Vangard's argument that the firm had been blacklisted was totally unsupported. Thus, Vangard's protest did not make a showing of possible fraud or bad faith, and our dismissal therefore was proper.

The request for reconsideration is denied.


James F. Hinchman
General Counsel