



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Techno Engineering & Construction, Ltd.--
Request for Reconsideration
B-233374.2

File:

Date: January 13, 1989

DIGEST

Where the Small Business Administration (SBA) determined that the protester is ineligible for certificate of competency (COC) because of an error by the firm in its COC application, the contracting agency is not required to return the COC referral to SBA for reconsideration.

DECISION

Techno Engineering & Construction, Ltd. requests reconsideration of our prior dismissal of its protest under invitation for bids (IFB) No. N62471-87-B-2553, issued by the Navy for the repair of air handling units at Wahiawa, Hawaii. We dismissed the protest because we do not review the denial by the Small Business Administration (SBA) of a certificate of competency (COC) absent a showing of possible fraud or bad faith on the part of government officials. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(3) (1988). Techno was found ineligible for a COC by the SBA, but had not made such a showing. Techno now argues that it was not protesting SBA's finding that it was ineligible for COC program assistance, but instead was protesting the Navy's refusal to return the matter to SBA after SBA notified the protester that it would reconsider if requested to do so by the agency.

We affirm our prior dismissal.

On August 1, 1988, the Navy determined Techno to be nonresponsible based on its unsatisfactory performance on previous Navy contracts in the Hawaii area and on its lack of business ethics and integrity. Techno subsequently applied to the SBA for a COC. By letter dated September 15, 1988, the SBA regional office advised Techno that it had been found ineligible for COC program assistance because its application showed that Techno intended to perform only 20 percent of the work under the proposed contract, in contravention of the solicitation's requirement that the

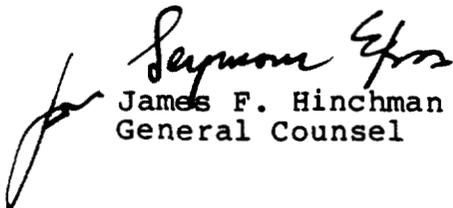
044400/137746

bidder perform 25 percent of the work under the contract. Techno then sent a letter dated September 29 to SBA contending that it actually intended to perform 25.93 percent of the work. By letter dated October 5, the SBA regional office informed Techno that its case had been closed, that SBA did not "have the right to reopen it unilaterally," but that SBA would entertain a new application if the procuring activity would again refer the matter to SBA for further COC consideration. On October 12, Techno again wrote to the SBA regional office, insisting that it would perform 25.93 percent of the work and that the 20 percent figure on its application was the result of an error on its part. On October 14, the Navy awarded the contract to Economy Plumbing & Sheetmetal, Inc.

A small business firm contesting a negative responsibility determination is responsible for filing a complete and acceptable COC application in order to avail itself of the protection provided by statute against unreasonable or bad faith determinations of responsibility. Ferrite Engineering Labs, B-222972, July 28, 1986, 86-2 CPD ¶ 122.

Here, the SBA's decision to not process Techno's application for COC consideration resulted from Techno's statement in its application that it would perform only 20 percent of the work required under the IFB, not from any conduct of the Navy. While the SBA indicated that it would reconsider its position if the Navy requested it to do so, we are aware of no requirement that an agency return a COC referral to SBA for reconsideration under these circumstances. See The Swanson Associates, Inc.--Request for Reconsideration, B-220088.2; B-220089.2, Oct. 8, 1985, 85-2 CPD ¶ 396.

We affirm our prior dismissal.


James F. Hinchman
General Counsel