

Relax



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alaska Lee's, Inc.

File: B-233973

Date: March 20, 1989

DIGEST

Protest challenging refusal by the Small Business Administration to issue a certificate of competency are denied 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

Alaska Lee's, Inc., protests the Small Business Administration's (SBA) refusal to issue a certificate of competency (COC) in connection with invitation for bids (IFB) No. 8-SI-20-09320 issued by the Department of the Interior, Bureau of Reclamation (DOI) for the acquisition of janitorial services for its facilities in Sacramento, California. Alaska Lee's argues that the SBA acted improperly in denying its application for a COC.

We deny the protest.

Bids were opened on October 21, 1988, and Alaska Lee's was the apparent low bidder. On November 2, DOI's contracting officer found Alaska Lee's to be nonresponsible on grounds that the firm lacked sufficient financial and personnel resources and organizational structure to perform the contract. By letter dated November 2, the determination of nonresponsibility was referred to the SBA for review and possible issuance of a COC pursuant to the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), and Federal Acquisition Regulation (FAR) § 9.104-3(e) (FAC 84-39). By letter dated November 8, the SBA notified Alaska Lee's of the contracting officer's determination, provided the firm with a COC application package which included financial forms, and instructed it to furnish the information requested in the COC application package to the SBA's Seattle regional office and Anchorage district office no later than November 17. On

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November 16, the SBA's industrial specialist received Alaska Lee's application materials at the Seattle office and on November 18 telephonically contacted the protester to arrange an on-site visit to be performed at DOI's Sacramento facility.^{1/} Shortly after, the industrial specialist decided to conduct a telephone interview with Alaska Lee's in lieu of an on-site visit and consequently had an individual in his office contact Alaska Lee's to cancel the on-site visit. On December 6, the telephone interview took place.

On December 8, the SBA's industrial specialist contacted personnel at SBA's Anchorage district office who were charged with preparing a financial report on Alaska Lee's. On that date, he was informed that the protester had not furnished the requested information to the Anchorage office. On the same day the industrial specialist contacted Alaska Lee's and informed it of the necessity of furnishing information to the Anchorage office. The industrial specialist also called DOI's contracting officer on December 8 to obtain an extension of the deadline for the SBA to complete its review. See FAR § 19.602-2 (a) (FAC 84-12). On December 9, the Anchorage office of the SBA telefaxed its financial report to the Seattle office. Thereafter the industrial specialist prepared his recommendation to SBA's review committee to deny a COC. The review committee, on December 14, unanimously voted to approve the industrial specialist's recommendation.

In its letter of protest, Alaska Lee's argues that various actions on the part of the SBA's industrial specialist were taken in bad faith with the purpose of preventing Alaska Lee's from obtaining a COC. In particular, Alaska Lee's alleges that, in his initial contact with the firm, the industrial specialist spoke in an "adversarial tone" and stated that he did not feel that Alaska Lee's would receive a COC. The protester also alleges that the industrial specialist told DOI contracting officials that Alaska Lee's had failed to show up for the Sacramento on-site visit. In addition, Alaska Lee's alleges that the SBA's industrial specialist incorrectly told the firm that it would need Federal Bureau of Investigation (FBI) security clearances for certain of its employees before the completion of the COC review. Finally, the protester alleges that the industrial specialist failed to notify the SBA's Anchorage

^{1/} The industrial specialist had arranged the on-site visit for the DOI facility rather than at the protester's facility because the protester's facility had recently been destroyed by fire.

district office of the need for a financial review and failed to notify Alaska Lee's of the need to file financial materials with the Anchorage district office until the "zero hour."

The SBA responds that to the best of its knowledge, nothing improper occurred in the conduct of the Alaska Lee's COC review. In this connection, the SBA has furnished affidavits executed by the cognizant SBA personnel as well as various unsworn statements executed by individuals who had contact with Alaska Lee's personnel during the pendency of the COC review. These materials are offered in support of the SBA's position that nothing improper occurred in the conduct of the review and that the protester's allegations are untrue.

Our Office reviews COC determinations when a protester's submission suggests that SBA action on a referral may have been taken fraudulently or in bad faith or that the SBA has failed to consider information vital to a determination of responsibility. See F. Rulison & Sons, Inc., B-230758, Apr. 18, 1988, 88-1 CPD ¶ 379. Here, we think that the protester has failed to carry its burden of proof in establishing its allegations of bad faith. In our opinion, Alaska Lee's has done little more than merely assert that the actions of the SBA's industrial specialist were taken in bad faith. Indeed, the protester's submissions contain virtually no evidence, such as affidavits and business records, in support of its position. In contrast, the reports submitted by the DOI and the SBA, when read together, present a logical and well supported description of the events surrounding the Alaska Lee's COC application and review.

First, the record does not support the allegation that the industrial specialist did not notify Alaska Lee's of the need to file financial information with the Anchorage district office. The SBA's November 8 notice of the referral of the nonresponsibility determination which enclosed the COC application clearly contains a request for, among other things, financial information. The notice also explicitly directed Alaska Lee's to file a completed copy of its COC application with the SBA's Anchorage district office. Further, the record shows that Alaska Lee's was subsequently advised by telephone of its failure to submit financial information. In fact, the industrial specialist, rather than closing the COC file for lack of financial information, requested that DOI extend the deadline for a COC determination so as to allow the Anchorage district office an opportunity to complete its financial review.

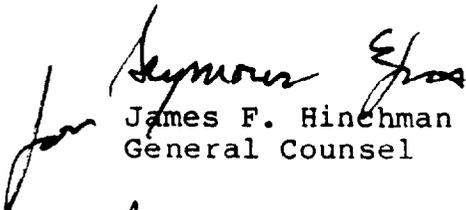
As to Alaska Lee's allegation that the industrial specialist spoke in "adversarial terms" and told the firm that it would not likely receive a COC, the record contains the specialist's uncontested statement that he did not "state or imply that Alaska Lee's would probably not qualify for a COC for this solicitation, nor did I indicate that business concerns usually do or do not qualify for a COC." In addition, the professional demeanor of the industrial specialist is corroborated by statements contained in the affidavits of his colleagues.

With respect to the canceled on-site visit to DOI's facilities, the record shows that it was the actions of the industrial specialist that resulted in the cancellation and that the cancellation had no impact upon the SBA's review of Alaska Lee's. In this connection, we note that the industrial specialist states in his affidavit that he contacted DOI personnel to inform them of the cancellation and that he never told them that Alaska Lee's "failed to show up." Again, this evidence of record is uncontroverted by any creditable evidence submitted by the protester.

Finally, with regard to Alaska Lee's allegation that the industrial specialist required FBI security clearances before contract award, we find that the record fully supports the SBA's position that no security clearances were requested for purposes of the COC review. The industrial specialist states in his affidavit that he at no time demanded that Alaska Lee's provide employees with FBI security clearances. He states in his affidavit that he requested Alaska Lee's to produce some evidence to substantiate the firm's claim that employees of the then-current contractor who did have FBI clearances had committed to work for Alaska Lee's.

Simply stated, the record does not support the allegation of improper action, let alone bad faith, on the industrial specialist's part. Furthermore, we note that the industrial specialist's recommendation to deny the COC was unanimously confirmed by an SBA review committee. Under these circumstances, we find no merit to the protest. See Vanguard Industries, Inc., B-233490.2, Dec. 21, 1988, 88-2 CPD ¶ 615.

The protest is denied.


James F. Hinchman
General Counsel