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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TLC Moving, Inc.--Reconsideration
File: B-234850.2
Date: April 11, 1989

DIGEST

Dismissal of protest is affirmed where reconsideration is requested based on agency's failure to delay award to another firm pending Small Business Administration (SBA) action on protester's request for second certificate of competency (COC) review; there is no provision for appeal of COC denial, and no requirement that agency delay award pending further SBA review.

DECISION

TLC Moving, Inc., requests reconsideration of our March 17, 1989 dismissal of its protest under Department of the Air Force invitation for bids (IFB) No. F02601-88-B-0049, for moving and storage services. We affirm the dismissal.

In its original protest, TLC challenged the Small Business Administration's (SBA's) affirmation, by declining to issue a certificate of competency (COC), of the Air Force's elimination of TLC from award consideration based on its determination that the firm was not a responsible prospective contractor. We dismissed the protest by notice, advising TLC that we generally will not review a nonresponsibility determination where a small business is concerned, since by law the SBA has conclusive authority to determine a small business' responsibility and that, for the same reason, we will not review the SBA's COC decisions. We will review such matters where there is a showing of possible fraud or bad faith on the part of government officials, or that the SBA failed to consider vital information bearing on the firm's responsibility, 4 C.F.R. § 21.3(m)(3)(1988); Short Electronics, Inc., B-231610, Sept. 13, 1988, 88-2 CPD ¶ 233, but TLC made no such showing.

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TLC's request for reconsideration does not really take issue with our dismissal, but instead references another letter it sent to our Office (received March 30) asserting that, subsequent to the filing of TLC's original protest, the SBA agreed to reconsider its COC decision based on new evidence; that the Air Force nevertheless made award to another firm; and that this refusal by the Air Force to delay the award further evidences bias against TLC as a woman-owned firm.

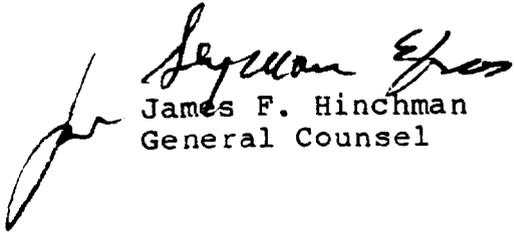
Applicable SBA regulations require the contracting agency to withhold award to another firm for 15 working days following a referral to the SBA for a COC review. 13 C.F.R. § 125.5(d) (1988). There is no provision for a formal appeal of a negative determination by the SBA, however, and there is no other requirement that the agency delay award following the SBA's denial of a COC; indeed, the Federal Acquisition Regulation (FAR) states that, in the absence of some other agreement with the SBA, the agency shall proceed with the acquisition by making award to another eligible firm if a COC has not been issued within the 15-day period. FAR § 19.602-4.

The record shows that the Air Force made the COC referral on or about February 9 (the date of a letter from the SBA to TLC advising the firm of the referral), that the SBA's denial of the COC was issued March 7, and that award was not made until March 28. As there was no legal requirement that the Air Force delay the award beyond March 28 to permit TLC to continue pursuing the matter with the SBA, the agency's failure to do so was proper and did not evidence bias or bad faith.

TLC also asserts in its March 29 letter that the SBA's original denial of the COC was due to misinformation furnished by the Air Force in its COC referral. This assertion is untimely. Our Regulations require that protests be filed no later than 10 working days after the protest basis was or should have been known. 4 C.F.R. § 21.2(a)(2). The record shows TLC was advised of the general reasons for the Air Force's nonresponsibility determination in the SBA's February 9 letter, and of the specific reasons in the March 7 COC denial letter, which we will assume TLC received no later than March 14 (1 calendar week after mailing). Technology for Advancement, Inc., B-231058, May 12, 1988, 88-1 CPD ¶ 452. If TLC believed that the agency furnished misleading information to the SBA,

it should have so alleged before March 30, which was more than 10 working days after the two dates TLC should have been on notice of the bases for the determination.

As TLC has not presented evidence that our dismissal was founded on errors of law or fact, or any information not previously considered that warrants reopening the protest, the dismissal of its protest is affirmed.


James F. Hinchman
General Counsel