

Cofes



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pittman Mechanical Contractors, Inc.

File: B-242102

Date: March 13, 1991

David A. Hearne, Esq., Outland, Gray, O'Keefe & Hubbard, for the protester.

James McCutcheon, Esq., and Vicki O'Keefe, Esq., Department of the Navy, for the agency.

Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In view of the conclusive statutory authority of the Small Business Administration (SBA) to determine the responsibility of a small business concern, review by the General Accounting Office of a challenge to a contracting officer's determination that a small business concern is nonresponsible, and the subsequent denial of a certificate of competency by SBA, is limited to determining whether bad faith or fraudulent action on the part of government officials resulted in denial of a meaningful opportunity to seek SBA review, or whether SBA failed to consider vital information concerning the firm's responsibility.

DECISION

Pittman Mechanical Contractors, Inc. protests the contracting agency's nonresponsibility determination and the subsequent refusal of the Small Business Administration (SBA) to issue a certificate of competency (COC) in connection with invitation for bids (IFB) No. N62470-88-B-2757, issued by the Naval Facilities Engineering Command, Department of the Navy, for drain system repairs and modifications for Building L-20, Naval Aviation Depot, Norfolk, Virginia.

We deny the protest.

Pittman, a small business concern, submitted the only bid under the IFB. The Resident Officer in Charge of Construction for the Norfolk Naval Shipyard conducted a pre-award survey, which indicated that Pittman's recent performance on six government contracts had been unsatisfactory. In this regard, he found that Pittman's past unsatisfactory performance included, but was not limited to, the firm's unsatisfactory workmanship, poor management, and labor violations. Based on the results of the pre-award survey, the contracting officer determined that Pittman was not responsible. Accordingly, he referred his nonresponsibility determination to SBA for a COC review. After reviewing Pittman's application and the information from the contracting agency regarding the firm's performance history, SBA denied a COC. Pittman's protest to our Office followed.

Our Office will not review a contracting officer's determination that a small business concern is nonresponsible where the firm is eligible for COC consideration and SBA exercised its jurisdiction upon referral because SBA's determination, not the contracting officer's, regarding whether the firm is responsible and, hence, entitled to a COC, is conclusive. See 15 U.S.C. § 637(b) (1988). Similarly, since SBA, not our Office, has the statutory authority to determine the responsibility of a small business concern, we will consider a challenge to SBA's decision to issue, or not to issue, a COC only where the protester alleges that bad faith or fraudulent actions on the part of government officials resulted in denial of a meaningful opportunity to seek SBA review, or that SBA failed to consider vital information bearing on the firm's responsibility. Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132.

In this case, Pittman contends that the contracting agency's determination that Pittman was not responsible was "arbitrary and capricious amounting to bad faith" on its part. In support of this position, Pittman merely makes the general, unsupported allegation that the contracting officer relied on information that was not relevant to the solicitation at issue; Pittman did not elaborate on its contention, and after receipt of the agency report on the protest, made no substantive response, simply asking that we decide the case on the existing record.

The record shows that the Navy based its nonresponsibility determination on a complete review of Pittman's performance history, which, contrary to the protester's suggestion, is relevant in determining its responsibility. Subsequently, the Navy submitted to SBA this substantial record of information concerning Pittman's prior performance, and there is no indication that Pittman had any less than a full opportunity to present information supporting its position to the SBA.

Accordingly, there is no evidence to suggest that the agency's actions, in any way, adversely affected the protester's opportunity for review by SBA.

Pittman also contends that SBA failed to consider vital information concerning the firm's responsibility. In support of this contention, Pittman merely alleged generally in its initial protest letter that SBA did not consider unspecified "management and administrative remedies" taken by Pittman after the cited labor violations occurred.^{1/} Pittman did not elaborate on its contention, and, as with its challenge to the contracting agency's decision, made no substantive response to the agency report on this issue.

The record shows that the Navy forwarded a complete package of information on Pittman's performance history to SBA, which states that it based its denial of the COC upon a comprehensive analysis of all the available information concerning Pittman. The documents forwarded to SBA indicate that the Army Corps of Engineers recently issued unsatisfactory performance evaluations on two of Pittman's contracts and terminated one contract for default. In addition, the contracting officer's report indicates that Pittman's performance on three recent Navy contracts was unsatisfactory. With regard to the Navy contracts, the agency concluded that Pittman's performance was untimely; the management of its past contract work was poor; and Pittman committed labor violations on these contracts as well as 13 other contracts. Since the record shows that SBA had before it complete information regarding Pittman's performance history, and Pittman has made no showing of any vital evidence that was not considered, we see no basis to question SBA's determination.

The protest is denied.


for James F. Hinchman
General Counsel

^{1/} We note that even Pittman's initial allegation concerned only one aspect of its performance history, its labor violations, without addressing the other factors, such as unsatisfactory workmanship and poor management, which both the Navy and SBA considered.