



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Firth Construction Co., Inc.

File: B-243514.3

Date: June 25, 1991

DECISION

Firth Construction Co., Inc. protests the Small Business Administration's (SBA) alleged failure to follow applicable regulations by dismissing its appeal filed in connection with request for quotations No. CRM-3-111877, issued as a total set-aside for small disadvantaged business (SDB) concerns by Boeing Petroleum Services, the prime contractor operating and managing the Strategic Petroleum Reserve for the Department of Energy (DOE).

Firth initially filed an agency-level protest with DOE, which challenged the award of a contract to Vilaret Construction Services, Inc. on the basis that Vilaret did not meet the RFQ's set-aside requirement. Firth then filed a protest with our Office challenging DOE's alleged failure to forward to SBA Firth's protest objecting to the awardee's self-certification as a small business and as an SDB concern. While Firth's protest was pending at our Office, DOE forwarded its size status protest to SBA. The cognizant SBA Regional Office ruled on the portion of the protest relating to Vilaret's status as a small business, finding that Vilaret's affiliation with another firm made it ineligible for award as a small business. Vilaret appealed this determination and ultimately was found to be eligible for award.

A copy of Firth's protest also was sent to SBA's Division of Program Certification and Eligibility for consideration of that portion dealing specifically with Vilaret's status as an SDB. SBA declined to address Firth's challenge regarding Vilaret's status as an SDB concern in part because it did not regard Firth's protest as a direct challenge to Vilaret's SDB status; it had not been submitted by the contracting officer or SBA as required by applicable regulations; and the SBA Regional Office already had determined that Vilaret is other than small for the subject contract. Firth appealed SBA's refusal to render a decision regarding Vilaret's SDB status.

Firth then protested to our Office to challenge SBA's failure to respond to its appeal. We dismissed the protest as premature based on the fact that the appeal was still pending at SBA.

SBA dismissed Firth's appeal, finding that Firth had not provided specific, detailed evidence to support its allegation that Vilaret is not an SDB concern. Firth's current protest to our Office challenges SBA's dismissal on the ground that SBA failed to follow applicable regulations relating to consideration of SDB protests.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Mgmt. Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, and that the grounds stated be legally sufficient. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. §§ 21.1(c)(4), 21.1(e)). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.

Firth's protest does not establish that SBA's decision not to consider Firth's challenge to Vilaret's SDB status violated the applicable regulations. Firth's protest concerning Vilaret's SDB status, a copy of which was attached to its protest to our Office, states only that:

"[A]ward has been made to a company which is not and has not been certified as meeting the criteria set forth in the Code of Federal Regulations, Title 13 CFR, Part 124, and the Federal Acquisition Regulation, Part 19 and therefore by definition under the applicable Federal Statutes, cannot at this time be certified as a 'Disadvantaged Business' in full compliance with Federal requirements and therefore is ineligible for award."

The SBA regulation that addresses the form and specificity of protests challenging a firm's SDB status, 13 C.F.R. § 124.607 (1991), provides in pertinent part:

"(b) A protest must be sufficiently specific to provide reasonable notice as to the ground(s) upon which the protested concern's disadvantaged status

is challenged and to call into question the disadvantaged status of the protested concern. A protest merely alleging that the protested concern is not disadvantaged, without setting forth any basis for the allegation, will not be deemed to specify adequate grounds for the protest. Some basis for the belief stated in the protest must be given. . . .

"(c) Protests which do not contain sufficient specificity may be dismissed by the SBA."

On its face, Firth's protest in essence merely states that Vilaret is not an SDB without substantiating the claim. Firth's statement that Vilaret "is not and has not been certified" simply is not sufficient to reveal the basis for its belief that Vilaret is not an SDB, as required by the applicable SBA regulation.^{1/} Accordingly, Firth has not shown, and we see no basis to conclude, that SBA's decision not to consider its challenge to Vilaret's status as an SDB on the ground that it lacked sufficient specificity was contrary to the applicable SBA regulation.

The protest is dismissed.

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^{1/} We are not persuaded by Firth's argument that SBA's dismissal here is improper because it is inconsistent with SBA's decision to review another unrelated protest previously filed by Firth which essentially contained the same language and allegations challenging the disadvantaged status of another offeror. The propriety of an agency's decision in a particular case is not determined by the agency's actions in connection with prior procurements. See Ferrite Eng'g Labs, B-222972, July 28, 1986, 86-2 CPD ¶ 122.