

Evans
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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Marine Instrument Company
File: B-242166.3
Date: September 27, 1991

Timothy S. Kerr, Esq., Starfield, Payne & Korn, for the protester.
Robert Rapp for Carbonara Labs, Inc., an interested party.
Jonathan H. Kosarin, Esq., and Gary Van Osten, Esq., Department of the Navy, and Christopher Holleman, Esq., U.S. Small Business Administration, for the agencies.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of Small Business Administration's (SBA) denial of certificate of competency based on lack of evidence that protester's items for sale were produced in accordance with solicitation's quality control requirements is denied where record does not support allegation that SBA failed to consider vital information in that regard.

DECISION

Marine Instrument Company, a small business, protests the decision by the Small Business Administration (SBA) to deny it a certificate of competency (COC) in connection with request for proposals (RFP) No. N00104-90-R-G199, issued by the Navy Ships Parts Control Center for 49 stadimeters.^{1/} Marine contends that SBA failed to consider vital information bearing on its responsibility.

We deny the protest.

As Marine submitted the low-priced, technically acceptable proposal in response to the RFP, the contracting officer requested a preaward survey of the firm in connection with a responsibility determination. The preaward survey, conducted by the Defense Contract Management Area Office (DCMAO),

^{1/} A stadimeter is used aboard ship to measure the ship's distance from other objects, enabling it, for example, to maintain formation within a convoy.

Phoenix, Arizona, recommended against award to Marine based on its unsatisfactory quality assurance capability. The survey report noted that the 49 stadimeters Marine intended to supply under this contract were units already produced under two recently defaulted Navy contracts; DCMAO found that Marine could not produce inspection records to establish that the completed stadimeters had been produced in accordance with military quality control standard MIL-I-45208A, as required by the RFP. In addition, DCMAO considered that, since the offered units were already completed and thus were not manufactured under the requirements of the RFP, Marine would not be able to submit an acceptable first article. DCMAO also noted that an independent laboratory inspection of four of the stadimeters revealed various defects. Based on DCMAO's findings, the contracting officer determined Marine to be nonresponsible. Accordingly, he referred his nonresponsibility determination to SBA for a COC review. 15 U.S.C. § 637(b)(7)(A) (1988). In addition to reviewing the preaward survey information, SBA conducted a financial analysis and an on-site survey of Marine's production facility. Following this review, SBA declined to issue a COC, concluding that Marine had not established that the stadimeters it was offering were produced in accordance with MIL-I-45208A. Upon learning of SBA's decision, Marine filed this protest.

As a preliminary matter, SBA, not our Office, has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the COC process. Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132. In a case where SBA denies a COC, our review is limited to cases 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 upon the firm's responsibility. Id.

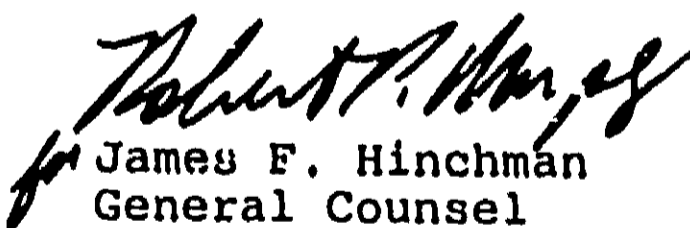
Marine asserts that SBA failed to consider vital information in denying the COC. In this regard, Marine alleges that SBA's determination failed to recognize that Marine did in fact have a MIL-I-45208A system in place when it produced the offered stadimeters.

The record does not support Marine's position that SBA failed to take into account its MIL-I-45208A quality control system. To the contrary, the record shows that SBA visited Marine's facilities and reviewed its production records for the stadimeters it was offering to determine whether the units were produced under MIL-I-45208A procedures. In this connection, SBA explains that, while Marine was able to produce inspection and certification records for certain stadimeter parts, there was no evidence that the completed

stadimeters contained those particular parts, Marine does not dispute this fact. Instead, Marine argues that SBA should have considered its ability to produce new stadimeters--as opposed to supplying existing units--in accordance with MIL-I-45208A. This argument is untenable. As Marine offered to supply existing units, not to produce new units, SBA properly considered whether those units were produced in accordance with the RFP requirements. Thus, while Marine disagrees with SBA's conclusion about its quality controls, it has not shown that SBA failed to consider vital information. The fact that the protester may disagree with SBA's conclusion does not constitute a showing that SBA failed to consider information vital to Marine's responsibility. Marine Instrument Co., B-241287.2, May 6, 1991, 91-1 CPD ¶ 436.

In any case, SBA did consider Marine's ability to produce new units, and found that Marine was delinquent on all seven of its completed or terminated Navy contracts during the past year. While Marine argues that two of those contracts, which were terminated by the Navy for default, should not be considered delinquent because they are in the process of being appealed at the Armed Services Board of Contract Appeals, SBA points out that Marine was still delinquent on the other five contracts. Again, while Marine disagrees with SBA's conclusion as to the effect of those delinquencies on its responsibility, it has not shown that SBA failed to consider vital information in reaching that conclusion. Marine Instrument Co., B-241287.2, supra.

The protest is denied.


for James F. Hinchman
General Counsel