



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Formal Management Systems, Inc.

File: B-244512

Date: October 23, 1991

Rudolph F. Aragon, Esq., Coffy, Aragon, Martin, Burlington and Serota, for the protester.
Anil Raj for Halter Marine, Inc., an interested party.
M.K. Baker, Panama Canal Commission, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the protester is unable prior to award to demonstrate a firm commitment for a lease of the construction site it would require for contract performance, the contracting officer's determination that the protester was nonresponsible was reasonable.

DECISION

Formal Management Systems, Inc. (FMS) protests the award made to Halter Marine, Inc. under invitation for bids (IFB) No. P-90-97, issued by the Logistical Support Division of the Panama Canal Commission (PCC) for the procurement of three aluminum launches for transporting pilots and linehandlers. FMS, the low bidder, argues that the contracting officer unreasonably concluded the firm was nonresponsible.

We deny the protest in part and dismiss it in part.

Firms were to submit bids for the construction of launches in accordance with the drawings and specifications contained in the IFB. Bid opening was held on April 22, 1991. FMS, as the low bidder, was informed that it would have to undergo a preaward survey to determine the firm's responsibility. On May 7, a visit was made to FMS' facilities by PCC personnel as part of the preaward survey. The PCC personnel were shown a proposed site for the fabrication of the boats. However, the use of the site required a lease from the government of Panama. On May 8, FMS and the contracting officer agreed that FMS was to

submit additional information for the purpose of the responsibility determination. This information included: preliminary production schedule; quality control plan; proposed personnel; prior major projects; financial resources, and letter of firm commitment for the vessel fabrication site. This information was to be submitted by May 14. After FMS advised that this did not allow it enough time to respond to the request, the contracting officer permitted FMS a 1-week extension of the time period.

The survey team subsequently recommended that no award be made to FMS based on its survey of FMS resources and the additional information submitted by FMS. The contracting officer, based on the survey results concluded that FMS had not demonstrated its ability to perform the contract. Among other things, he found that FMS did not establish the availability of the site to fabricate the launches.¹ By letter of June 4, the contracting officer informed FMS that it had been determined to be nonresponsible. On June 5, 1991, award was made to Halter Marine, Inc.

FMS argues it is fully capable of performing this contract and that in view of its past track record of integrity, tenacity, preserverance, and financial ability in performing PCC contracts, the contracting officer should have known that FMS was capable of performing the work involved in this procurement. It also argues that the survey was not designed, or conducted in a manner, to provide it with a meaningful opportunity to explain fully its capabilities.

A responsibility determination concerns whether the bidder has the ability to fulfill the obligations that it offers to assume and involves such matters as the bidder's facilities, equipment, and financing. Aviation Specialists, Inc; Aviation Enters., Inc., B-218597; B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174. Contracting officers have a wide range of discretion and business judgment in reaching nonresponsibility determinations, and we will not question those determinations unless the protester can establish that they lacked a reasonable basis. American Sys. Corp., B-234449, June 8, 1989, 89-1 CPD ¶ 537. Further, due process considerations do not attach to responsibility determinations because they are administrative in nature and there is no requirement that bidders be afforded special opportunities to demonstrate their abilities to perform. Firm Reis GmbH., B-224544 et al., Jan. 20, 1987, 87-1 CPD ¶ 72. Further, in determining the responsibility of the

¹ FMS also was found to lack costly production equipment, financial capability and relevant experience in launch fabrication. These concerns led the contracting officer to question FMS' ability to timely complete the work.

bidder, the contracting officer is not required to provide the bidder with an indefinite amount of time to provide the information necessary to establish its responsibility. Only a reasonable amount of time need be afforded the bidder for this purpose, National Health Laboratories, Inc., B-228402, Dec. 10, 1987, 87-2 CPD ¶ 576.

We find reasonable the contracting officer's determination that FMS was nonresponsible because FMS had no firm commitment for the site that it would need in order to perform the contract in a satisfactory manner. This determination was reasonable in view of the fact that without the lease of the site FMS would be unable to perform as promised in its bid. The record shows that, in response to the agency's request for information concerning a site commitment, FMS submitted a letter of May 21 from the government of Panama stating that the government was taking the steps necessary to lease a site to FMS. FMS further advised the contracting officer on June 3 that the government of Panama had agreed to lease the site to FMS. No supporting documentation from the government of Panama was furnished with this statement. Thus, at the time of award to Halter Marine on June 5, FMS had not provided the contracting officer with evidence that it had a firm commitment for the lease of a site. It was not until FMS submitted its comments on the agency protest report by letter of August 6 that it provided a letter dated July 30 from the Panamanian government confirming in writing that it had completed all the steps necessary to provide FMS with a lease of the site and that FMS had a firm commitment to use the site. This was almost 2 months after FMS had been found nonresponsible and the contract had been awarded. Moreover, we think the preaward survey and the contracting officer's request for site commitment information provided FMS reasonable opportunity to timely provide evidence of a lease commitment.

FMS has suggested in its comments to the agency protest report the possibility that the awardee's bid may have been nonresponsive and the awardee may have been improperly found responsible. Since the issue of the responsiveness of the awardee's bid has been raised more than 3 months after the public bid opening and almost 2 months after the initial protest was filed, FMS has not diligently pursued the issue. Diemaster Tool, Inc., B-238877.3, Nov. 7, 1990, 91-1 CPD ¶ 162. Further, our Office does not review a challenge to an affirmative determination of responsibility absent a showing that the contracting officer may have acted

fraudulently or in bad faith or that definitive responsibility criteria in the IFB have not been meet, 4 C.F.R. § 21.3(m)(5) (1991); Cam Indus., B-230597, May 6, 1988, 88-1 CPD ¶ 443.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel