



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

Decision

Matter of: J&J Maintenance, Inc.
File: B-251355.2; B-251355.4
Date: May 7, 1993

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.
Dennis E. Jontz, Esq., Civerolo, Wolf, Gralow & Hill, for Phillips National, Inc., an interested party.
Thomas A. Mason, Jr., Esq., Department of Transportation, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Alleged material misrepresentation in resumes for managers submitted by a bidder to meet definitive responsibility criteria in invitation for bids for facilities maintenance contract did not make the bidder ineligible to receive the award where the misstatements were not made in bad faith and did not materially influence the agency's determination of the bidder's responsibility.
2. The General Accounting Office will consider protests by third parties concerning the Small Business Administration's issuance of a certificate of competency only upon a prima facie showing that government officials acted fraudulently or in bad faith or willfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria.

DECISION

J&J Maintenance, Inc. protests the proposed award of a contract to Phillips National, Inc. under invitation for bids (IFB) No. DTCG41-93-B-QWE201, issued by the United States Coast Guard, Department of Transportation, for facilities maintenance and support services. J&J principally contends that Phillips made a material misrepresentation in its bid and should therefore be ineligible for award. Alternatively, in a supplemental protest, J&J contends that the Small Business Administration (SBA) failed to consider vital information in issuing a certificate of competency (COC) to Phillips.

We deny the protest and dismiss the supplemental protest.

The IFB, issued April 1, 1992, required bidders to submit resumes for certain key personnel, including the project manager and the alternate project manager. As relevant here, the IFB required that the project manager have either a minimum of 2 years of college in business management or engineering and 5 years of experience as a journeyman craftsman or a 4 year engineering degree. The alternate project manager was required to have essentially the same qualifications as the project manager.

Nine bids were received on November 3, 1992. Phillips submitted the low bid, and J&J, the incumbent, submitted the second low bid. The agency requested a preaward survey of Phillips by the Defense Contract Management Area Office as part of its responsibility review. The preaward survey report recommended no award based primarily on the following:

"[The resume for the project manager] stated that [he] has a degree in English and graduated from Gannon College in 1969 The senior recorder at Gannon College stated that [the proposed project manager] took one correspondence course, but no indication of completion was recorded."

Phillips's alternate project manager, contrary to statements in his resume, similarly failed to meet the minimum qualification requirements. Based on the preaward survey report, the agency determined Phillips to be nonresponsible and referred the matter to the SBA for consideration under its COC procedures. The SBA, in considering whether to issue the COC, investigated the qualifications of the managers proposed by Phillips. The SBA industrial specialist questioned the president of Phillips about these resumes. In response, the president "indicated that these individuals had worked for the company a number of years, and he considered them highly competent and professional [but] he had failed to confirm their statements concerning education and experience." The president of Phillips then arranged for a substitute project manager and alternate project manager through a professional job placement referral service. The industrial specialist verified the work and education experience of the two substitute managers by telephone calls to their supervisors and educational institutions. The industrial specialist found the substitute managers fully qualified. Consequently, the SBA found Phillips to be responsible and issued a COC. These protests followed.

J&J states that its protest does not concern Phillips's responsibility as a prospective contractor. Rather, J&J argues that Phillips's bid contained "material misrepresentations" that not even a COC can cure since the "integrity of the procurement process" was affected by the misrepresentations, requiring disqualification of the Phillips bid.

Generally, in negotiated procurements, where an offeror has made an intentional misrepresentation that materially influenced an agency's consideration of its proposal, we have found that the proposal should be disqualified and a contract award based upon the proposal canceled. Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53; Moorman's Travel Serv., Inc.--Rec'n., B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643. We have applied this rule where the alleged misrepresentation concerned a certification submitted to assist the contracting officer in determining an offeror's responsibility. Universal Technologies, Inc.; Spacecraft, Inc., B-248808.2 et al., Sept. 28, 1992, 92-2 CPD ¶ 212. In such cases, we have reviewed the matter to determine whether the alleged misrepresentation was made in bad faith or materially influenced the agency's determination of the awardee's responsibility. See id. We follow the same rule here.

First, the record contains no evidence that the principals of Phillips submitted the erroneous resumes knowingly or in bad faith. As stated above, the president of Phillips stated that his firm had never previously verified the educational background of the proposed managers. Second, the allegedly material misrepresentations in the resumes did not prevent the agency from finding Phillips to be a nonresponsible prospective contractor--Phillips derived no benefit from the erroneous statements in the resumes and did not receive consideration for award based on these statements. Thus, to the extent that the protester contends--outside the context of the responsibility of Phillips--that our Office should recommend that Phillips be disqualified from the competition based on the alleged misrepresentations, we have no basis to do so since the alleged misrepresentations were not made in bad faith and did not materially influence or induce the agency to find the firm to be a responsible prospective contractor. See Universal Technologies, Inc.; Spacecraft, Inc., supra.

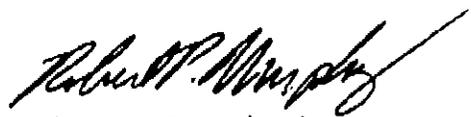
In its supplemental protest, J&J argues in the alternative that if the alleged misrepresentations do concern Phillips's responsibility, the SBA improperly issued the COC because it failed to consider vital information during its proceedings. Specifically, J&J contends that while the agency referred both the question of Phillips's capacity to perform and Phillips's integrity to the SBA in its referral, the SBA,

either through "inadvertence" or "intentionally," failed to perform a formal and independent "integrity review" in addition to its review of Phillips's ability and capacity to perform the work.

Our Office will consider protests by third parties concerning the SBA's issuance of a COC only upon a prima facie showing that government officials acted fraudulently or in bad faith or willfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria. Sun Envtl., Inc., B-228491, Oct. 29, 1987, 87-2 CPD ¶ 435; National Maintenance, Inc., B-224186; B-224186.2, Nov. 18, 1986, 86-2 CPD ¶ 580. Furthermore, the "vital information" test is met with respect to definitive responsibility criteria so long as the SBA is aware of the definitive responsibility criteria in deciding to issue the COC. The issuance of a COC is an affirmative determination of the firm's ability to perform the contract, and this Office recognizes the SBA's authority to consider whether a small business concern is capable of performing despite the fact that it does not meet definitive responsibility criteria. See id.

The SBA here was fully aware of the IFB's requirement for manager résumés with certain stated qualifications (which constituted definitive responsibility criteria) and was also aware of the alleged misrepresentations. The SBA permitted the firm to substitute qualified individuals and subsequently issued the COC. Since the matter involved the firm's responsibility, the SBA properly permitted the firm to substitute qualified personnel after bid opening. See Reliable Bldg. Maintenance Co., B-190167, Feb. 17, 1978, 78-1 CPD ¶ 139.

The protest is denied, and the supplemental protest is dismissed.


James F. Hinchman
General Counsel