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

Decision

Matter of: Thomas & Sons Building Contractor, Inc.--
Reconsideration

File: B-252970.2

Date: June 22, 1993

James H. Thomas for the protester.
Robert C. Arsenoff, Esq., and John W. Van Schaik, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Request to reconsider dismissal of a protest alleging that the Small Business Administration (SBA) failed to consider vital information regarding protester's past performance history in conjunction with a certificate of competency (COC) proceeding is denied where record shows that protester did not discharge its obligation to provide its own assessment of its performance history to SBA when requested to do so during the COC proceeding rather than that the procuring agency failed to furnish any required information to SBA.

DECISION

Thomas & Sons Building Contractor, Inc. requests reconsideration of our April 7, 1993, decision in which we dismissed its protest against the refusal of the Small Business Administration (SBA) to issue a certificate of competency (COC) under solicitation No. N62472-92-B-5574, issued by the Department of the Navy for the construction of a building for the Naval Air Warfare Center-Aircraft Division (NAWC-AD) in Lakehurst, New Jersey.

We deny the request for reconsideration.

We dismissed Thomas' protest because we found that it did not fall within the limited exception to the general rule that this Office does not consider challenges to SBA's refusal to issue a COC. In its request for reconsideration, Thomas argues that its protest does meet our standard for review since it alleges that various contracting activities, including NAWC-AD Lakehurst, failed to provide to SBA information in their possession which reflected favorably on the protester's past performance on four separate contracts

and that this led to SBA's failure to consider "vital information" in the course of its COC proceedings.

In recognition of SBA's conclusive statutory authority to issue or not to issue a COC, 15 U.S.C. § 637(b) (1988), we strictly limit our review of challenges to the COC decisionmaking process to cases where a protester alleges that bad faith or fraudulent actions on the part of government officials resulted in a denial of the protester's opportunity to seek SBA review, or that SBA's denial of a COC was made as a result of bad faith or "the contracting officer's failure to provide SBA with vital information bearing on the firm's responsibility." Bullard-Lindsay Contracting Co., Inc., B-252027, May 18, 1993, 93-1 CPD ¶ ____.

In 1992, NAWC-AD Lakehurst issued performance reports concerning Thomas' performance on contract No. N62472-90-C-5372 for roof repairs which contained the contracting activity's assessment of Thomas' performance as unsatisfactory regarding timeliness, among other things. In response, Thomas submitted letters to NAWC-AD Lakehurst disputing the Navy's assessment of its performance and giving its version of events. Thomas' protest is based on the agency's alleged failure to include these rebuttal letters in its referral to the SBA.

The agency, however, was not required to provide the protester's rebuttal materials to the SBA. There is no legal requirement that an agency submit rebuttal information concerning a contractor's past performance in its possession to SBA; this is the responsibility of the COC applicant. Fastrax, Inc., B-232251, Feb. 9, 1989, 89-1 CPD ¶ 132. In inviting Thomas to apply for a COC on March 5, 1993, SBA informed the firm that its performance record had been questioned by NAWC-AD Lakehurst and indicated that it was Thomas' responsibility to submit information concerning its recent history of contract performance, including an explanation of any problems relating to late performance. On March 12, Thomas responded and referred to performance problems it had experienced on three Navy contracts, including one with NAWC-AD Lakehurst; however, the firm's response did not contain the precise rebuttal materials regarding contract No. N62472-90-C-5372 upon which Thomas' protest was later based. Thomas may not now use the protest process to present more detailed information than it did to the SBA concerning its past performance with the NAWC-AD Lakehurst contract. Fastrax, Inc., supra.

To the extent that Thomas' protest relies on allegations concerning the quality of information relating to its past performance provided by contracting activities other than NAWC-AD Lakehurst, it does not fall within the limited scope of our review of the COC process since it is not based on contentions that "the contracting officer" failed to provide the SBA with information vital to the firm's responsibility. Bullard-Lindsay Contracting Co., Inc., supra.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel