

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-187550

DATE: April 27, 1977

MATTER OF: Maywood Cab Company, Inc.

DIGEST:

Rejection of low bidder pursuant to contracting officer's determination of nonresponsibility based on termination for default of similar contract 9 months earlier was improper where no preaward survey had been conducted in interim and earlier deficiencies were easily correctable, since FPR § 1-1.1205-2 requires information regarding performance capability be as current as feasible in relation to date of award. However, since it would be prejudicial to other bidders to attempt to reconstruct factors affecting Maywood's responsibility as a bidder at time of award, award will not be disturbed.

Maywood Cab Company, Inc. (Maywood), protests the award of a contract to Bellwood-Hillside-Westchester Cab Company, Inc. (Bellwood), under solicitation No. 578-6-T issued by the Veterans Administration (VA), Hines, Illinois, for taxicab services.

The solicitation was a total set-aside for small business concerns. A total of 10 firms was solicited and bids were received from five bidders. Bid opening was on September 15, 1976, and Maywood was the apparent low bidder but was determined to be nonresponsible by the contracting officer for reasons of lack of tenacity and perseverance. This determination was apparently based on Maywood's termination for default of a similar contract in January 1976. An up-to-date preaward survey was not conducted on Maywood although the evidence indicates that preaward surveys were conducted on at least two other bidders, including the successful one, on September 20, 1976.

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On September 20, 1976, pursuant to Federal Procurement Regulations § 1-1.708-2(a)(1) (1964 ed. amend. 71), the contracting officer notified the Chicago regional office of the Small Business Administration (SBA) that award must be made as expeditiously as possible and included a determination and finding stating the reasons for urgency and a determination of nonresponsibility. No response was received from the SBA and on September 27, 1976, the contracting officer awarded the contract to Bellwood as the low responsible bidder.

In The Pulse Companies, Inc., B-184463, June 15, 1976, 76-1 CPD 376, we stated:

"FPR § 1-1.708.2(a)(5) requires a determination that a small business concern is not responsible for reasons other than capacity or credit to be 'supported by substantial evidence documented in the contract file.' Recognizing that questions of responsibility are matters primarily for determination by the procurement agencies, we have upheld nonresponsibility determinations for reasons other than capacity or credit when the evidence of record reasonably provided a basis for such determinations. Kennedy Van & Storage Company, Inc., B-180973, June 19, 1974, 74-1 CPD 334; 51 Comp. Gen. 288 (1971); 49 *id.* 139 (1969). However, determinations based on an alleged lack of tenacity, perseverance or integrity have not been upheld when the evidence did not relate to those factors or did not adequately establish a basis for a determination of nonresponsibility." 49 Comp. Gen. 600 (1970).

We believe it was improper for the contracting officer to have relied solely on Maywood's termination for default some 9 months earlier as the basis for determination of nonresponsibility. It is our view that FPR § 1-1.1205-2 (1964 ed. amend. 95), which states that information regarding performance capability shall be obtained on as current a basis as feasible with relation to the date of contract award, was not complied with. In 51 Comp. Gen. 448 (1972) we pointed out that a bidder's responsibility generally should be measured from information of record at the time of award, rather than an earlier time, and we expressed the view that further consideration of a determination of nonresponsibility would be desirable because of a material change in a principal factor on which the determination was based. See also 51 Comp. Gen. 588 (1972). In the circumstances we think it is pertinent to note Maywood's position that the earlier deficiencies were readily correctable and have in fact been corrected.

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Responsibility is essentially for determination by the contracting officer, subject to certain review by SBA when a small business is concerned, and we make no judgment as to whether Maywood should have been found responsible. However, it is clear that the determination of responsibility was defective since it does not appear to have been based on current evidence available at the time of award.

While corrective action cannot be taken since the factors affecting Maywood's responsibility as a bidder as of time of the determination cannot be reconstructed, we are by letter of today recommending to the Administrator of Veterans Affairs that in the future the most current information be used to determine a bidder's responsibility.

R. G. Kinn
Deputy Comptroller General
of the United States

BIDDERS

Qualifications

Prior unsatisfactory service
Defaulted contractor
apparent low bidder
Nonresponsibility determination
Propriety

BIDDERS

Qualifications

Preaward surveys
Utilization
Failure to conduct
Defaulted contractor

BIDDERS

Qualifications

Tenacity and perseverance
Determination review
Nonresponsibility determination defective
Not based on current information

BIDDERS

Qualifications

Small business concerns
Nonreferral for certification justification
Time of the essence