

DECISION

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

K. MARIS
Proc I

7595

FILE: B-192023

DATE: September 11, 1978

MATTER OF: Mayfair Construction Company

DIGEST:

1. Determination by contracting officer that low bidder was nonresponsible for lack of integrity because allegedly false certifications submitted under requirements of prior Government contracts were under investigation by FBI was justified. Determination was based on substantial evidence in record which supplied reasonable basis therefor.
2. Determination by contracting officer that low bidder was nonresponsible for lack of integrity was based on most current information available when preaward survey was conducted which revealed that corporation's Director of Operations and others were currently under investigation by FBI for fraud and/or falsification of documents in connection with Government contracts.
3. Protester's contention, that procuring agency's failure to give formal notice that protester's reputation for integrity was being questioned was improper, is without merit since procurement statutes and regulations do not require formal notice prior to making of responsibility determinations and since contracting officer makes responsibility determination in administrative rather than judicial capacity. Moreover, protester had notice in fact.

Invitation for bids (IPB) No. 10-0040-8 was issued by the National Aeronautics and Space Administration (NASA), Kennedy Space Center (KSC), on March 13, 1978, for modification to the Space Shuttle Payload Vertical Processing Facility. At bid opening on April 26, 1978,

the Mayfair Construction Company (Mayfair) was found to be the low bidder. However, the contracting officer determined that Mayfair was nonresponsible for lack of business integrity.

In his nonresponsibility determination dated May 23, 1978, the contracting officer noted that in April 1978 the Assistant United States Attorney had authorized the Federal Bureau of Investigation (FBI) to conduct a preliminary investigation of the Director of Operations of Mayfair and others for possible commission of fraud and/or falsification. The FBI was requested by the NASA Southeastern Regional Inspector to investigate the matter after a KSC quality assurance audit led to the discovery that required certifications for welders and weld inspectors had been falsified on five prior occasions in other Mayfair contracts with NASA.

Counsel for Mayfair contends that the determination of nonresponsibility was not based on substantial evidence. He argues that even assuming the allegations of false certificates are ultimately proven to be true, they are not defects of a nature which go to the core of the matter or threaten the procurement process. In this regard, it is emphasized that upon notification by NASA that three certificates were inadequate, Mayfair took immediate steps to, and did, obtain satisfactory certifications for the individuals concerned. It is argued that the procurement process could only be jeopardized if the men involved were not qualified inspectors. Moreover, counsel points out that certification procedures are a continuous and ongoing subject between contractors at KSC and the Government, and that at most Mayfair's actions were due to carelessness rather than a willful attempt to defraud the Government.

It is also argued that the information on which the decision was made as to integrity was not current, and that until receipt of the contracting officer's finding of nonresponsibility dated May 23, 1978, no formal notice was ever received by Mayfair that its corporate reputation for integrity was jeopardized.

Before award of a contract, the contracting officer must make an affirmative determination that the prospective contractor is responsible. NASA Procurement Regulation (PR) § 1.904-1 (1977 ed.). If the information available to the contracting officer "does not indicate clearly

that the prospective contractor is responsible," a determination of nonresponsibility is required. NASA PR § 1.902 (1977 ed.). In order for a prospective contractor to be determined responsible, he must have a satisfactory record of integrity. NASA PR § 1.903-1(iv) (1977 ed.). This Office has consistently taken the position that the question as to whether evidence of a bidder's lack of integrity is sufficient to warrant a finding in a particular case that a bidder is not responsible is a matter primarily for determination by the administrative officers concerned, and such determination will not be questioned by us in the absence of a clear showing of the lack of a reasonable basis therefor. Colonial Eaking Company, B-185305, July 20, 1976, 76-2 CPD 59; P.T. and L. Construction Co., Inc., 55 Comp. Gen. 343, 345 (1975), 75-2 CPD 208.

We have indicated that the definition of "integrity" as used in connection with Government contractors is no different from its generally accepted connotation. 48 Comp. Gen. 769, 771 (1969). Thus, we noted in the cited case that "integrity" has been defined as "uprightness of character and soundness of moral principle, honesty, probity" and "moral soundness, freedom from corrupting influence or practice." We have also relied on the definition given in Black's Law Dictionary, Fourth Edition, which states:

"As occasionally used in statutes prescribing the qualification of public officers, trustees, etc., this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts. It is synonymous with 'probity,' 'honesty' and 'uprightness.'" Id.

In this case the contracting officer's determination of nonresponsibility for lack of integrity was based on a NASA preaward survey pursuant to NASA PR 1.900. The survey revealed not only that an FBI investigation of Mayfair's Director of Operations and others was under way, but also that the investigation was prompted by information submitted to the FBI by NASA which allegedly implicated the Director of Operations and certain other Mayfair employees

in the falsification of certificates of competency for welders and weld inspectors required under prior contracts with NASA. (The instant procurement also had such requirements.)

We have held that while we would be extremely reluctant to subscribe to the general proposition that lack of integrity on the part of an employee must always be imputed to the corporation, where a key employee is involved in fraud against the Government, imputing the lack of integrity to the corporation is proper, unless not based on substantial evidence. 48 Comp. Gen. 769, 772, supra. Moreover, we disagree with counsel for Mayfair that the contracting officer's determination of lack of integrity in the instant case was not based on substantial evidence.

This is not a situation in which the submission of false certificates can be attributed to mere carelessness, as information relied upon by the contracting officer and the FBI, which we have examined, makes clear. Furthermore, we think that this is a matter which goes to the core of the procurement process and is of a type indicating lack of integrity. Thus, the instant case is distinguishable from those cited by the protester's counsel. That the employees for whom the false certificates were submitted were subsequently proven qualified does not mitigate the fact that the alleged falsification of certifications required under prior Government contracts had led to an investigation by the FBI into possible criminal activity in the matter. Certainly on these facts we cannot say that the determination by the contracting officer was not based on substantial evidence in the record or lacked any reasonable basis.

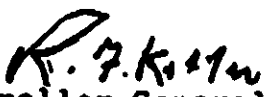
We have held that determinations as to the responsibility of a bidder or offeror to perform a contract should be based on the most current information available. New Hampshire-Vermont Health Service, 57 Comp. Gen. 347 (1978), 78-1 CPD 202; Inflated Products Company, Incorporated, B-188319, May 25, 1977, 77-1 CPD 365. Citing our decision in Maywood Cab Company, Inc., B-187550, April 27, 1977, 77-1 CPD 288, in which we held that the contracting officer should not have relied on a default termination 9 months earlier to find a contractor nonresponsible without doing a more up-to-date survey, counsel for Mayfair argues that the information on which the finding of nonresponsibility was made in this case was not current.

We disagree. A preaward survey was conducted by the contracting officer in this case. Indeed, it was at this time that he learned of the allegedly false certificates, the most recent of which was submitted to NASA on July 15, 1977. Although Mayfair had obtained satisfactory certifications for the individuals concerned, the FBI investigation of Mayfair's Director of Operations and others for possible commission of fraud or falsification was then under way. On these facts, it is clear that the determination of nonresponsibility was based on the most current information available.

In regard to Mayfair's contention that it received no formal notice that its corporate reputation for integrity was in jeopardy, we agree with NASA that there is no requirement that any such formal notice be given before making a determination of nonresponsibility. Since these determinations are administrative in nature, they do not require the procedural due process otherwise necessary in judicial proceedings. Decision Sciences Corporation, B-188454, September 14, 1977, 77-2 CPD 188.

Moreover, it is clear that Mayfair had notice in fact that NASA was concerned with the apparent falsification of certificates. On September 30, 1977, NASA notified Mayfair that certificates for two of its employees were inadequate. Thereafter, on November 23, 1977, the NASA contracting officer met with Mayfair's Director of Operations to discuss three of the false certificates. At that time, the Director indicated that he was aware of "a problem" and that regarding two of the certifications, the employees involved had wrongfully taken a "short cut" to obtain their documentation. Additionally, articles appearing in Today, a Florida newspaper, on January 7 and 11, 1978, broke the story that Mayfair was under investigation by NASA due to the submission of allegedly bogus weld inspector certifications. In these articles, Mayfair's Director of Operations, as well as its president, commented upon the incident. Thus, it is clear that Mayfair was in fact aware that its reputation for integrity was under question.

The protest is denied.


Deputy Comptroller General
of the United States