



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-230672.2

September 21, 1988

The Honorable Jim Sasser
United States Senate

Dear Senator Sasser:

We refer to your July 16, 1988, inquiry on behalf of Ingram Barge Company concerning its bid protest of an award to Port Arthur Towing Company (PATCO) by the Military Traffic Management Command (MTMC). The award was made pursuant to a request for tenders to move and/or store aviation fuel throughout the Gulf Coast.

Ingram filed its protest with our Office on March 11 challenging the contracting officer's affirmative determination of responsibility of PATCO. By decision, Ingram Barge Co., B-230672, June 28, 1988, 88-1 CPD ¶ 614, we denied Ingram's protest. You ask "in view of recent developments at the Pentagon," why we did not investigate further the protest filed by Ingram against MTMC's award to PATCO.

Although we normally do not undertake investigations in connection with protest allegations, we have always been sensitive to allegations of fraud or other criminal conduct. Protests based on such allegations constitute a small portion of the total number of bid protests filed with our Office. Nevertheless, when such allegations appear to be potentially meritorious, such that investigation is warranted, we have referred the cases to the Inspectors General or our own in-house fraud prevention group. Further, where there is reasonable cause to believe that a

criminal law has been violated, we will refer the information to the Criminal Division of the Department of Justice for further action. We do not believe that such further investigation was warranted here.

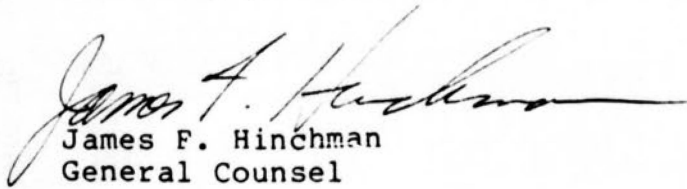
MTMC suspended PATCO and numerous individuals connected with PATCO based on criminal indictments. PATCO and these individuals were proposed for debarment based on guilty pleas in the criminal proceedings. While certain individuals were debarred, MTMC and PATCO arrived at a settlement agreement in which PATCO agreed to remove certain convicted individuals from the company and to establish internal standards of conduct and a code of ethics. A civil action against PATCO subsequently was initiated by PATCO customers seeking treble damages under 18 U.S.C. § 1964, based on the unlawful activities to which PATCO and the individual parties had pleaded guilty. The civil court found wrongdoing on PATCO's part. Following these court proceedings, MTMC determined PATCO to be responsible for purposes of this contract. The protester contended that the contracting officer failed to consider the civil court findings in determining PATCO's responsibility.

As stated in our decision, the determination of whether a firm can and will meet its legal obligations if its bid is accepted (i.e., that the firm is "responsible") necessarily is a subjective business judgment for the procuring officials, who must bear the consequences of contract performance deficiencies, and thus is not readily susceptible to our review. J.F. Barton Contracting Co., B-210663, Feb. 22, 1983, 83-1 CPD ¶ 177. Our Office therefore will not take exception to an affirmative responsibility determination unless there is a showing of possible fraud or bad faith on the part of procurement officials, or the solicitation contains definitive responsibility criteria that allegedly have not been applied. D.D.S. Pac., B-216286, Apr. 12, 1985, 85-1 CPD ¶ 418. Ingram was unable to support its allegation of bad faith or fraud.

We found no basis to question the reasonableness of the contracting officer's determination. The facts surrounding the civil action against PATCO were the same as those involved in the prior criminal proceedings which had been fully reviewed by the contracting officer. We found that the settlement agreement reflected significant corrective action taken by the management of PATCO and provided a reasonable basis for the contracting officer to find the firm responsible to meet its legal obligations upon acceptance of its bid.

We have again reviewed the protest record and find no reason to conclude that further investigation was warranted.

Sincerely yours,



James F. Hinchman
General Counsel