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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Universal Marine & Industrial Services, Inc.

File: B-292964

Date: December 23, 2003

Jeffrey A. Lovitky, Esq., for the protester.

Jeannie Wallace Thorn for Wallace Fabrication L.L.C., an intervenor.

Talbot J. Nicholas II, Esq., Department of Homeland Security, U.S. Coast Guard, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's affirmative determination of awardee's responsibility is denied where record does not support allegation that contracting officer failed to consider available relevant information, and there is no showing of a violation of statute or regulation.

DECISION

Universal Marine & Industrial Services, Inc. protests the award of a contract to Wallace Fabrication L.L.C. under invitation for bids (IFB) No. DTCG23-03-B-TCB014, issued by the Department of Homeland Security, U.S. Coast Guard, for steel ocean buoys. Universal principally asserts that the agency improperly determined that Wallace was a responsible prospective contractor.

We deny the protest.

The IFB, issued on July 8, 2003 as a small business set-aside, provided for the award of a requirements contract for a base year, with four 1-year options. The agency received 11 bids, including Universal's (the incumbent contractor) and Wallace's. Wallace's bid was low at \$10,972,440, and Universal's was second low at \$12,168,849.

On September 16, the agency conducted a preaward survey at Wallace's leased facility on Middle Road in Mobile, Alabama to determine the firm's responsibility. The contracting officer completed a "Determination on Prospective Contractor Responsibility" form for Wallace, indicating that the agency had conducted an on-site preaward survey, and found that Wallace was satisfactory on all relevant factors,

including, for example, technical and production capability, equipment and facilities, performance record, quality assurance procedures, financial capability and ability to meet delivery or performance dates. Agency Report (AR), Tab 3, Determination of Prospective Contractor Responsibility, at 1. Based on these findings, the agency determined that Wallace was responsible and awarded the contract to Wallace on September 30.

Universal alleges that the Coast Guard made an improper affirmative determination of responsibility with respect to Wallace. Citing a Dunn and Bradstreet report, the protester argues that the awardee has no manufacturing facilities but operates out of the residence of the owner, has no published telephone number, has no financial statements and a high credit balance of only \$500, and has only 1 employee. Protest at 2; Protest, Exhibit 1, Dunn & Bradstreet Report, Oct. 1, 2003, at 1-5. Additionally, the protester asserts that Wallace was not established until July 2003, and has no prior sales. Protest at 2. The protester argues that it is “impossible to fathom” that the general standards of responsibility can be satisfied by a company with no facilities, one employee, and no prior sales.¹ Id. at 3.

Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer’s discretion, our Office generally will not consider a protest challenging an affirmative determination of responsibility, except under limited exceptions. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2003). We recently revised our Regulations in this regard to add as a specified exception protests “that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation.” Id. We explained in the preamble to the revision that it was “intended to encompass protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. 67 Fed. Reg. 79,833, 79,834 (2002); Verestar Gov’t Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4. While we initially found that Universal’s protest was sufficient to satisfy the threshold requirement that a protest raise serious concern that the contracting officer may have failed to consider

¹ In this regard, the Federal Acquisition Regulation (FAR) § 9.104-1 sets forth seven “general standards” of responsibility, including having adequate financial resources; being able to meet delivery or performance schedules; having a satisfactory performance record; having a satisfactory record of integrity and business ethics; having the necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them; having the necessary production and technical equipment and facilities or the ability to obtain them; and being otherwise qualified and eligible to receive an award.

relevant responsibility information, the record shows that the information cited by Universal is either erroneous or was considered by the contracting officer.

First, the record, as reflected in the preaward survey documentation, shows that Wallace was not working out of a private residence, but out of a fabrication facility. In this regard, the preaward survey team toured Wallace's current leased facility, a 6,000 square foot fabrication shop located on 7 acres on Middle Road, as well as a 73,000 square foot facility on 11 acres that the owners planned to lease or purchase. AR, Tab 2, Contracting Officer's Statement, at 1-2; AR, Tab 4, Preaward Survey, at 1. The survey report noted that Wallace had been granted approval to lease the larger facility until the owners could obtain a loan, but specifically stated that the current facility was large enough to fabricate the buoys. AR, Tab 4, Preaward Survey, at 1. Further, the contracting officer states that during the survey it "was noted that Wallace Fabrication has three telephone lines and a fax number." AR, Tab 2, Contracting Officer's Statement, at 2.

As for Wallace's alleged lack of financial statements and resources, the contracting officer states that she contacted Wallace's financial institution on September 25 and was told by a representative there that Wallace "was in good standing" AR, Tab 2, Contracting Officer's Statement, at 1. Further, in verifying Wallace's small business status, the contracting officer received from a Small Business Development Center (SBDC) representative a verbal confirmation of its view that Wallace had ability to rent, purchase, or otherwise acquire the needed facilities, equipment, and personnel. Id. at 1.

While Universal asserts that Wallace has only one employee, the record shows that Wallace submitted four résumés to agency personnel at the preaward survey and that these four individuals "participated in the pre-award survey interview meeting," which the agency interpreted as demonstrating their intent to work for Wallace under the awarded contract. AR, Tab 2, Contracting Officer's Statement, at 2. The preaward survey report included these résumés and noted that Wallace personnel "involved in all facets of the buoy production are highly skilled and qualified." AR, Tab 4, Preaward Survey, at 1. Further, the contracting officer states that, during the survey, Wallace indicated that it had a list of potential production employees it could hire to perform the contract, and that the agency believed "finding qualified industrial personnel should not be a problem due to the large number of shipyards and fabrication enterprises in the Mobile area." AR, Tab 2, Contracting Officer's Statement, at 2. Finally, the report specifically referenced the experience of the individuals who submitted résumés, noting, for example, that one had almost 20 years of experience in welding and quality assurance, and that another had been in welding fabrication for 24 years and had been the production manager for the agency's prior ocean buoy contractor. AR, Tab 4, Preaward Survey, at 1.

The record also shows that the contracting officer was aware of, and specifically considered, Wallace's status as a new business entity, with no prior sales. In this

regard, the preaward survey report notes that Wallace was formed in July 2003, and that one of its officers had been an owner of American Industrial Marine, but left that firm to form Wallace with his wife. AR, Tab 4, Preaward Survey, at 1. In lieu of considering prior sales, the contracting officer found that a past performance review indicated that Wallace was satisfactorily managing the overhaul of a U.S. Coast Guard cutter, and that the vice president of Wallace had successfully managed the pier-side overhaul of another Coast Guard cutter. AR, Tab 2, Contracting Officer's Statement, at 1-2. Wallace's performance was considered satisfactory in regard to quality, cost control, timeliness and business relationships and Wallace had a satisfactory record of integrity and business ethics. Id. at 2. The contracting officer also notes that Wallace, as a newly-established business, would not be expected to have financial statements available. Id. at 2.

In sum, the record establishes that the contracting officer had before her the information that Universal asserts she failed to consider, and it is clear that she considered the significance of this information in conjunction with other information she obtained in determining that Wallace was responsible.²

In response to the agency's report on the protest (and a subsequent supplemental report), Universal has raised additional concerns about Wallace's financial status, its facility and its employees. For example, Universal argues that Wallace has no firm commitment to hire additional employees, that the agency did not reveal the identity of Wallace's financial institution, and that Wallace uses the telephone number of American. Protester's Comments at 3-5; Supplemental Comments, Nov. 19, 2003, at 1-2. The protester's continuing arguments essentially challenge the sufficiency of the evidence on which the agency based its determination, and of the investigation the agency performed. We find nothing unreasonable in the agency's investigation or conclusions. The agency was fully aware of the issues surrounding Wallace's ability to perform the contract, and obtained evidence through the preaward survey that addressed each of those concerns. The failure to investigate further does not give rise to a serious concern that the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation.

The protest is denied.

Anthony H. Gamboa
General Counsel

² For example, in addition to the information noted above, the record shows that members of the preaward survey team also viewed the equipment at Wallace's leased Middle Road site and were provided a two-page equipment list. AR, Tab 4, Preaward Survey, Equipment List. The equipment was professionally valued at over \$200,000. Supplemental Agency Report, Tab 21, Appraisal of Machinery and Equipment.