

DECISION



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

FILE: B-186441

DATE: September 10, 1976

MATTER OF: Building Maintenance Specialists, Inc.

61464
98058

DIGEST:

1. Where small business concern is found to be nonresponsible by procuring activity, GAO will not review COC determination by SBA absent showing that either SBA (which denied a COC) or agency failed to consider information vital to responsibility determination.
2. Award of a contract without referring nonresponsibility determination of a small business concern to SBA under COC procedures was proper since continuation of services was essential. ASPR § 1-705.4(c)(iv).
3. GAO will not question determination of nonresponsibility unless finding is shown to be arbitrary, capricious or not based on substantial evidence.
4. Cancellation of IFB by contracting officer because low responsive bid was found to be unreasonable as to price is not an abuse of discretion where bid in question is 7.2 percent higher than the Government estimate.

Building Maintenance Specialists, Inc. (BMS), protests against award of contracts by the Corps of Engineers, Fort Worth, Texas, under invitations for bids (IFB) Nos. DACW63-76-B-0048; -0058; -0067. Additionally, BMS challenges the cancellation of IFB No. DACW63-76-B-0055 and subsequent readvertisement under IFB No. DACW63-76-B-0069.

Invitation No. DACW63-76-B-0058

BMS's low bid was rejected by the contracting officer on the basis that BMS was not a responsible bidder after review of the recommendation and findings of the preaward survey team. Since BMS was a small business concern, the contracting officer referred the question of BMS's capacity and/or credit to the Small Business Administration (SBA) in accordance with Armed Services Procurement Regulation (ASPR) § 1-705.4(c) (1975 ed.). On April 22, 1976, SBA declined to issue BMS a certificate of competency (COC).

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We have consistently held that the refusal by SBA to issue a COC must be viewed as an affirmation of the contracting officer's negative determination. Additionally, under 15 U.S.C. § 637(b)(7) (1970), the SBA has the authority to issue or deny a COC and our Office has no authority to review an SBA determination, to require issuance of a COC, or to reopen a case when a COC has been denied. Zinger Construction Company, Inc., B-185390, December 16, 1975, 75-2 CPD 397, and cases cited in text. BMS has not presented any evidence to show that either SBA or the agency failed to consider all relevant information. Gallery Industries, Inc., Request for Reconsideration, B-185963, June 16, 1976, 76-1 CPD 383. Accordingly, there is no justification to further consider the merits of the protest under this IFB.

Invitation Nos. DACW63-76-B-0048; -0067

A preaward survey was conducted on BMS on March 17, 1976, for invitations Nos. DACW63-76-B-0048 and -0058. Based on this information BMS was determined nonresponsive. A request for a COC was made for IFB No. DACW63-76-B-0048. However, due to the immediate need for garbage removal and cleaning services, a certificate of urgency was filed with SBA and award was made to the fourth low bidder on April 22, 1976.

Invitation No. DACW63-76-B-0067 was a readvertisement of an earlier invitation for cleaning services which had been canceled because of ambiguous specifications. The preaward survey of March 17, 1976, was used as the basis of a survey conducted on April 5, 1976. Based on this information, the contracting officer determined BMS was not a responsible bidder. The determination was referred to the SBA for a COC. Due to delay by SBA in rendering the decision, another certificate of urgency was executed and award was made to the second low bidder on April 16, 1976.

ASPR § 1-705.4, supra, provides that when the bid or proposal of a small business concern is to be rejected solely because the contracting officer has determined that the concern is nonresponsive as to capacity or credit, the matter shall be referred to SBA and award shall not be made until SBA renders its decision or until 15 working days have elapsed, whichever is earlier. However, ASPR § 1-705.4(c)(iv) provides that a referral need not be made to SBA if the contracting officer certifies in writing that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to the SBA representative.

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The record before this Office reflects that the procurement in question was urgent because the accumulation of garbage would have become a health hazard if work under a new contract did not begin on time. Accordingly, and in the light of the adverse pre-award survey report on BMS's facilities, while the contracting officer's determination that BMS was not responsible was based on factors relating to its capacity, the matter was clearly within the purview of the provision in ASPR § 1-705.4(c)(iv) permitting exception to the SBA certificate of competency procedures.

As a general rule, our Office will not question administrative determinations of urgency of a procurement. Our review of the record as a whole affords no basis for concluding that the contracting officer's decision to make an award without incurring the delay incident to an SBA referral was unjustified or unreasonable. 53 Comp. Gen. 15 (1973).

With regard to the question of BMS's responsibility, it has long been the rule of our Office to accept the contracting officer's determination of responsibility, unless it is shown by convincing evidence that the finding was arbitrary, capricious, or not based on substantial evidence. 51 Comp. Gen. 233 (1971); 43 *id.* 298 (1963). On the present record, we find no basis to question the determination of nonresponsibility.

Accordingly, the protest of invitation No. DACW63-76-B-0048 and -0067 is denied.

Invitation DACW63-76-B-0069

The invitation in question was a readvertisement of IFB No. DACW63-76-B-0055. Five bids were received under the original invitation as follows:

Miller Company	\$ 49,947.00
BMS	64,258.70
One Way Service, Inc.	90,787.20
Kurt Baden	98,990.00
C. Jones & Sons	178,605.00

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The apparent low bidder alleged a mistake in bid and was allowed to withdraw its bid. All bids were rejected on April 5, 1976, on the basis of unreasonable prices. Upon readvertisement, BMS was the third low bidder. Award was made to the low bidder, C. Jones & Sons, on April 27, 1976, at its bid of \$50,308.

After bids have been opened award must be made to the lowest responsive, responsible bidder unless there is a compelling reason to reject all bids and readvertise. ASPR § 1-2.404-1(a), supra. However, under ASPR § 2-404.1(b), the invitation may be canceled after opening if the prices on all otherwise acceptable bids are unreasonable. The section, in pertinent part, states:

"(b) When it is determined prior to award but after opening that the requirements of 1-1203 (relating to the availability and identification of specifications) have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that--

* * * * *

"(vi) all otherwise acceptable bids received are at unreasonable prices; * * *" (Emphasis added.)

Contracting officers are clothed with broad powers of discretion in deciding whether an invitation should be canceled, and our Office will not interfere with such a decision unless it is unreasonable. Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160; 50 Comp. Gen. 177 (1970). The Government's estimate was \$59,924.87. BMS's original bid, then, was 7.2 percent higher than the Government estimate. We are unable to find any abuse of discretion by the contracting officer in canceling the solicitation where the low responsive bid contained a price which was in excess of the Government estimate. See Hercules Demolition Corporation, B-186411, August 18, 1976, and cases cited in text.

Accordingly, the protests are denied.

Acting

R. J. K. 111
Comptroller General
of the United States