

DOCUMENT RESUME

03315 - [A2353484]

[Protest against Methods Used in Preaward Survey]. B-186484.
August 22, 1977. 2 pp.

Decision re: Building Maintenance Specialists, Inc.; by Paul G.
Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Defense Supply Agency: Defense Contract
Administration Services; Department of the Army: Corps of
Engineers, Saint Paul District; Small Business
Administration.

Authority: A.S.P.R. 1-705.4(c)(vi). A.S.P.R. 1-203.1(iii). 54
Comp. Gen. 703.

The protester objected to the methods used in the
preaward survey of their firm. Since the Small Business
Administration declined to appeal the contracting officer's
determination as to the bidder's tenacity, perseverance, or
integrity, GAO would not review the determination in the absence
of a compelling reason to justify such a review. The protester's
objection to the agency's financial evaluation of the firm was
academic since the firm was rejected for other reasons.
(Author/SC)

3484

03315

Filed in
Proc. T!

DECISION



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

FILE: B-189484

DATE: August 22, 1977

MATTER OF: Building Maintenance Specialists, Inc.

DIGEST:

Where SBA declines to appeal contracting officer's determination as to bidder's tenacity, perseverance or integrity, GAO will not review the contracting officer's determination in the absence of a compelling reason to justify such review, such as a showing of bad faith or fraud by procuring officials. Moreover, protester's objection to agency's financial evaluation of firm is academic because firm was rejected for other reasons.

Building Maintenance Specialists, Inc. (BMS) has protested the methods used by the Defense Contract Administrative Services Management Area (DCASMA) in its preaward survey of that firm under Invitation for Bids (IFB's) Nos. DACW37-77-B-0034, DACW37-77-B-0035 and DACW37-77-B-0036 issued by the Corps of Engineers, St. Paul District (Corps) for maintenance services at park facilities.

BMS complains that for the purpose of evaluation of financial ability to perform DCASMA grouped these IFB's together and required that BMS have \$10,000 in addition to its present working capital. BMS contends that each solicitation should be considered separately. Award has not been made pending resolution of this protest.

The Corps states that in view of BMS' unsatisfactory performance on a prior contract with the St. Paul District, No. DACW37-76-C-0175, the contracting officer requested a preaward survey of BMS to determine the bidder's responsibility. DCASMA reviewed BMS' past performance on five other Government contracts and found a consistent failure to meet work schedules, slow or nonpayment of wages and debts, and late starts on contract performance. Based on the results of this preaward survey, the contracting officer found that BMS was not responsible for lack of tenacity or perseverance under Armed Services Procurement

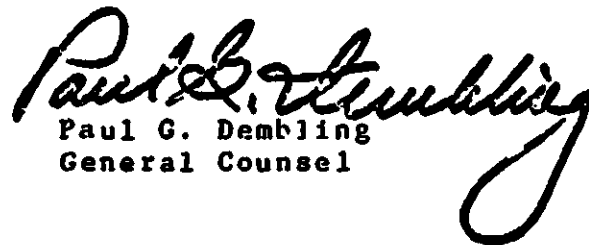
B-189484

Regulation (ASPR) 1-903.1(iii) (1976 ed.) The Corps points out that only the past performance of BMS was considered as the basis for the contracting officer's determination of nonresponsibility. Contrary to the contention of BMS, its financial position was not relevant to the basis for rejecting the firm, and we consider that issue to be academic.

In accordance with ASPR 1-705.4(c)(vi) (1976 ed.) the contracting officer furnished the appropriate Small Business Administration (SBA) Regional Office with documentation relevant to the contracting officer's determination that the firm lacked tenacity and perseverance. Under this regulation, SBA may, within five days, give notice to the contracting officer of an intent to appeal the matter and within 10 days of such notice SBA is required to provide the head of the procuring activity information and recommendations which would materially bear on any approval action. In the instant case, SBA declined to appeal the determination of the contracting officer.

Our Office has held that the procedures of SBA provide an effective process for reviewing agency determinations of nonresponsibility based on a lack of tenacity, perseverance and integrity. We, therefore, do not review such determinations by contracting officers unless there is a compelling reason to justify such action, such as a showing of bad faith or fraud on the part of the administrative officials involved. Building Maintenance Specialists, Inc., 54 Comp. Gen. 703 (1975), 75-1 CPD 122.

We do not find such a reason here, and the protest, therefore, is dismissed.


Paul G. Dembling
General Counsel