



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kirk Bros. Mechanical Contractors, Inc.

File: B-228603

Date: November 12, 1987

DIGEST

1. Fact that protester previously received a certificate of competency after a nonresponsibility determination by agency does not constitute showing of possible fraud or bad faith in same agency's nonresponsibility determination on current procurement; General Accounting Office thus will not review negative responsibility determination.

2. Contracting officer has discretion not to conduct a preaward survey of a small business before referring a nonresponsibility determination to the Small Business Administration for a certificate of competency review.

DECISION

Kirk Bros. Mechanical Contractors, Inc., a small business concern, protests that it was unfairly found nonresponsible by the Naval Air Development Center, under invitation for bids (IFB) No. N62472-87-B-4712. Kirk Bros. suggests that this negative responsibility determination is part of a pattern of continuous harassment, citing the fact that recently it was issued a certificate of competency (COC) by the Small Business Administration (SBA) in connection with another procurement conducted by this same contracting activity. Kirk Bros. also questions the contracting activity's referral of this negative responsibility determination to the SBA without first conducting a preaward survey, as it believes is required by regulation. We dismiss the protest.

Under 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to review a contracting officer's negative determination of responsibility and to determine a small business' responsibility by issuing or refusing to issue a COC. Consequently, we will not undertake an independent review of a contracting officer's nonresponsibility determination unless there is a showing that it may have

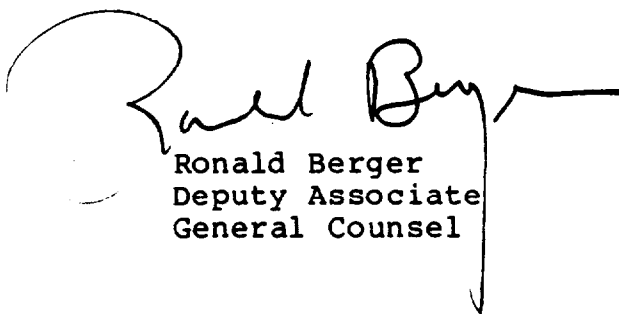
040566

stemmed from bad faith or fraud. Shook's Heating & Cooling, B-224701, Sept. 24, 1986, 86-2 CPD ¶ 349. Kirk Bros. has not satisfied this burden.

The sole evidence presented by Kirk Bros. is the fact that it received a COC in connection with another procurement conducted by the Naval Air Development Center. This is not evidence of agency fraud or bad faith. Determinations of responsibility are inherently judgmental, and as such a contracting activity and the SBA can reach opposite conclusions as to a firm's responsibility based on similar facts, neither having acted in bad faith. See GAVCO Corp.-- Request for Reconsideration, B-207846.2, Sept. 20, 1982, 82-2 CPD ¶ 242. The fact that the SBA issued Kirk Bros. a COC after a prior nonresponsibility determination by this contracting activity therefore does not constitute a showing of possible fraud or bad faith in the subsequent nonresponsibility determination, and our Office will not review the determination.

As to the second argument, Kirk Bros. contends that the contracting activity's failure to conduct a preaward survey is contrary to Federal Acquisition Regulation, 48 C.F.R. § 9.106-1 (1986). Under this regulation, however, an agency is not required to conduct such a survey if the information on hand or readily available is sufficient to allow the contracting officer to make a determination on responsibility. The contracting officer in this case presumably did not find a preaward survey necessary, and although Kirk Bros. disagrees with this view, it offers no basis for our Office to question the contracting officer's exercise of discretion in this regard.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel