



The Comptroller General
of the United States

Washington, D.C. 20548

Yelkley-AL

Decision

Matter of: Mark's Movers and Storage, Inc.

File: B-229945

Date: January 22, 1988

DIGEST

1. Contracting officer's determination that a small business concern is nonresponsible is not for review where the protester has not shown either possible fraud or bad faith on the part of government officials.
2. Protest is dismissed where action taken by the agency has rendered issues raised therein academic. The General Accounting Office (GAO) will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by GAO's decision.

DECISION

Mark's Movers and Storage, Inc., protests the propriety of actions taken by the Department of the Navy, under invitation for bids (IFB) No. N00128-88-B-0001, issued by the Naval Training Station, Great Lakes, Illinois, for packing and moving services for 10 zones. We dismiss the protest.

Mark's, an incumbent contractor, states that it is the low responsive bidder under the IFB and has a blanket purchase agreement (BPA) for moving services on file with the procurement activity. Mark's contends that the Navy improperly awarded noncompetitive contracts on December 18, 1987, to Deerfield Movers and Lake County Movers while evaluating bids under the IFB. According to Mark's, if the Navy required additional time to evaluate bids, it should have procured moving services under the existing BPA or by modifying Mark's contract, which expired December 31, 1987.

The Navy reports that it awarded contracts for 5 of the 10 zones covered by the IFB, and issued new BPAs and modified existing BPA's to obtain interim coverage for the other 5 zones pending award. Although, Mark's was the low

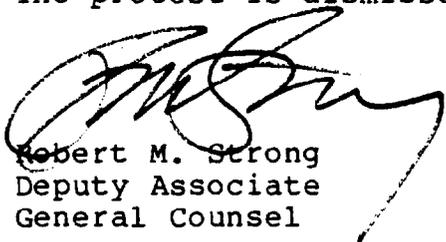
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responsive bidder for two of the latter zones, the contracting officer determined that Mark's was nonresponsible based on unsatisfactory performance on the prior contract, and referred the matter to the Small Business Administration (SBA) for consideration under certificate of competency (COC) procedures.

To the extent Mark's is contesting the contracting officer's nonresponsibility determination, the SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b) (1982). We generally will not review a contracting officer's nonresponsibility determination relating to a small business concern, since such a review would be tantamount to substitution of our business judgment for that of the SBA. Universal Canvas, Inc., B-226996, June 5, 1987, 87-1 CPD ¶ 576. Our Office therefore limits its review to instances where the protester shows either possible fraud or bad faith on the part of government officials. Id. Since neither has been demonstrated here, we will not consider this basis of protest.

The Navy reports that it has canceled all contractual actions not yet performed which the procuring activity took to provide interim coverage for the two zones on which Mark's bid. Because of the measures taken by the Navy, we believe the issues raised by Mark's concerning the propriety of the Navy's actions to obtain moving services pending award have been rendered academic. We will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by our decision. American Overseas Book Co., Inc., B-227835, July 17, 1987, 87-2 CPD ¶ 60.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel