

Ayer



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J&L Properties, Inc.--Reconsideration

File: B-231573.2, B-231574.2

Date: October 14, 1988

DIGEST

General Accounting Office will not review the Small Business Administration's (SBA) refusal to issue a certificate of competency when the record does not support the protester's allegation that SBA refused to consider vital information bearing on the firm's responsibility.

DECISION

J&L Properties, Inc., asks that we reconsider our June 1, 1988, dismissal of two protests the firm filed under Department of Housing and Urban Development (HUD) invitations for bids (IFB) Nos. 017-88-066 and 016-88-066 for area management broker services. The basis for the protests was the Small Business Administration's (SBA) refusal to issue J&L certificates of competency (COC) because of the firm's lack of capacity and credit, thus affirming HUD's negative assessments of J&L's responsibility in the procurements. We dismissed the protests because generally our Office does not review SBA denials of COCs. See section 21.3(m)(3) of our Bid Protest Regulations, 4 C.F.R. Part 21 (1988).

J&L seeks reconsideration on the grounds that SBA allegedly failed to consider three vital pieces of information bearing on J&L's responsibility; as an exception to the rule in section 21.3(m), we will consider a protest in that circumstance. See American Biomedical Instrumentation, Inc., B-228598, Feb. 22, 1988, 88-1 CPD ¶ 181. J&L alleges that SBA did not consider essential information about the firm's years of experience as a HUD area management broker without, according to J&L, ever being defaulted; J&L's ability to increase its staff to insure the job can be done; and J&L's adequate credit situation. We affirm the dismissals.

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In view of the nature of J&L's complaint, we asked SBA, as well as HUD, for a report on the matter. The reports show that J&L was formed in 1981 and at first was run by a husband and wife, with the husband directing sales and the wife serving as the firm's vice president. The husband left the firm in early 1985 to work for another firm, and the wife resigned as vice president in late 1986, but continued to work as an employee in the capacity of office manager/secretary. The firm is now controlled by two owners. The majority owner became the firm's president in 1987.

SBA, in its report, contends that the information J&L cites either was not vital to a decision on the company's responsibility or was considered and found not to warrant the issuance of a COC. SBA reports that the finding of a lack of capacity resulted from its plant survey of the firm. The survey began with a meeting attended by the SBA representative, the office manager and the minority owner. The majority owner did not attend the meeting. Later, the office manager's husband joined the meeting and, according to SBA, took an active role that conveyed the impression that he was the firm's spokesman. In view of the firm's change of ownership, SBA doubted that the majority owner was providing effective leadership for the company. SBA concluded, apparently because of the new owners' seeming lack of control, that the protester lacked the "necessary organization, experience, operational controls, [or] skills" to perform the contracts.

SBA further advises that it based its lack of credit finding on information provided by the protester, which did not include important data (no mention of a line of credit, no financial statements, no indication of officers' salaries, no showing of taxes, no showing of liabilities), and which contained discrepancies. SBA decided that the protester's financial information was too confusing to be trusted.

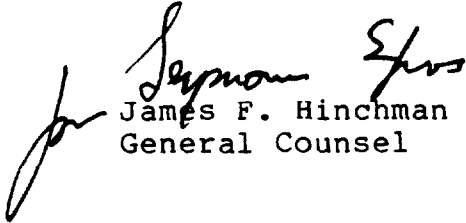
An allegation that SBA failed to consider vital information must be supported not just by a showing that the information in fact was essential to a COC decision, but by evidence sufficient to make a prima facie showing that SBA willfully disregarded it, thus implying bad faith. See Caesar Construction, Inc., B-213795, Dec. 15, 1983, 83-2 CPD ¶ 694.

J&L clearly has not met its burden here because the record simply does not establish that the information--concerning J&L's experience, staffing, and credit--was vital and purposefully was disregarded. The fact that J&L may have had considerable experience with HUD does not show that SBA's concerns about the quality of the firm's current management, given the relatively recent change in ownership,

were unwarranted. As to J&L's alleged plan to hire additional staff to insure it of the capacity to meet its area management broker responsibilities, we do not think staff size is determinative as to responsibility when there are serious outstanding questions regarding management's ability to organize and control contract performance. Finally, SBA's adverse decision on J&L's financial position was the result of what J&L concedes were its own omissions in the financial information forms required for SBA to make that judgment.

J&L's reconsideration request essentially only represents an expression of the firm's disagreement with SBA's decision not to issue COCs. Such disagreement does not bring the protest within the noted exception to our limited review role in this area.

Our dismissals are affirmed.


James F. Hinchman
General Counsel