



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Skyline Products--Second Request for
Reconsideration
File: B-231775.3
Date: March 2, 1989

DIGEST

General Accounting Office will not review protest challenging contracting agency's affirmative responsibility determination where protester fails to show that determination was based on possible fraud or bad faith or failure to apply definitive responsibility criteria. Fact that awardee has been unable to deliver conforming products to date under contract does not demonstrate that contracting officials acted fraudulently or in bad faith in making the responsibility determination.

DECISION

Skyline Products requests reconsideration of our decision, Skyline Products--Request for Reconsideration, B-231775.2, Aug. 11, 1988, 88-2 CPD ¶ 138, affirming our decision, Skyline Products, B-231775, July 7, 1988, 88-2 CPD ¶ 25, in which we dismissed Skyline's protest of the award of a contract to Allied Insulation Supply Co. under invitation for bids (IFB) No. DTCG80-88-B-00040, issued by the Coast Guard for the manufacture of honeycomb core panels.

We affirm our dismissal.

In its protest, Skyline in part alleged that Allied is not a responsible contractor because it does not have the manufacturing capability to fabricate the specified panels. Our Office will not review a protest of a contracting agency's affirmative determination of a bidder's responsibility unless there is a showing of possible fraud, bad faith, or failure to apply definitive criteria contained in the solicitation. 4 C.F.R. § 21.3(m)(5) (1988). Since Skyline did not make such a showing, we dismissed this ground of protest.

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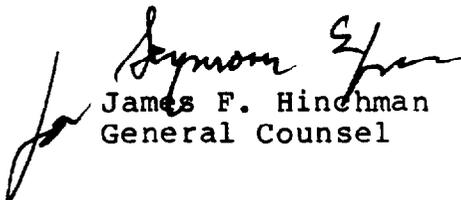
In its initial request for reconsideration, Skyline in part argued that it was likely that Allied would be unable to furnish a product conforming to the specifications in the solicitation. We dismissed this allegation on the ground that Allied had committed itself to providing a conforming product, and any questions as to whether Allied is capable of providing the required product or actually does so involve matters of responsibility and contract administration which we generally do not review.

In its current request for reconsideration, Skyline states that it has learned that the awardee in fact has been unable to date to deliver conforming products under the contract. In Skyline's view, this indicates either that the agency's affirmative responsibility determination was made fraudulently or in bad faith, or that the agency failed to apply definitive criteria contained in the solicitation. As a result, Skyline argues, its challenge to the agency's affirmative responsibility determination is appropriate for our review. We disagree.

In providing that there must be a "showing" of possible fraud or bad faith as a prerequisite to our review of affirmative responsibility determinations, our regulations contemplate more than just a bald, unsupported assertion; facts must be presented in the protest that reasonably indicate that the contracting officer's responsibility determination was motivated by a specific and malicious intent to harm the protester. See Vanguard Industries, Inc., B-233490.2, Dec. 21, 1988, 88-2 CPD ¶ 615. Skyline's contention does not meet this standard.

While the protester asserts that the Coast Guard's affirmative responsibility determination was made fraudulently or in bad faith, the mere fact that Allied has not been able to deliver conforming products--the evidence Skyline pointed to in support of its assertion--does not show possible fraud or bad faith on the part of the contracting officials. Further, the protester has not shown, and we see no indication, that the agency failed to apply definitive responsibility criteria in selecting Allied for award. Accordingly, Skyline has failed to show that the agency's affirmative responsibility determination is appropriate for our review.

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel