

Bene Jun



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ideal Aviation, Inc.
File: B-235165
Date: May 9, 1989

DIGEST

1. Where a small business protests a nonresponsibility finding by a contracting officer and the Small Business Administration (SBA) subsequently declines to issue a certificate of competency to the small business, the General Accounting Office will not review the nonresponsibility determination by either the agency or the SBA absent a showing of possible fraud or bad faith on the part of the contracting officials or of the SBA's failure to consider vital information bearing on the firm's responsibility.
2. Where an apparent low offeror is determined to be nonresponsible due to its failure to obtain a required lease under the proposed contract as a fixed base operator at a county airport, protester's allegations of unauthorized or unethical conduct by county officials concerning the lease award do not form a basis for a protest to the General Accounting Office under the Bid Protest Regulations.
3. The General Accounting Office (GAO) will not review matters concerning the inability of an apparent low offeror to meet leasing prerequisites of a proposed contract, where the lease award is strictly between the offeror and the cognizant county officials and such matters fall beyond the scope of GAO's bid protest functions.

DECISION

Ideal Aviation, Inc., a small business, protests the rejection of its low bid by the Defense Fuel Supply Center (DFSC), a field activity of the Defense Logistics Agency (DLA), under request for proposals (RFP) DLA600-89-R-0023, to obtain refueling services for transient government aircraft at Bob Sikes Airport, a county airport near Crestview, Florida. The contracting officer found Ideal to

045394/138616

be nonresponsible and, upon referral of the responsibility question to the Small Business Administration (SBA), the SBA declined to issue a Certificate of Competency (COC) to Ideal. Ideal protests the DLA's rejection of its bid and award to another firm.

The DLA has requested that we dismiss Ideal's protest on the basis that the facts it has presented do not "state a valid basis for protest" before our Office. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(3) (1988). For the reasons stated below, we agree with the DLA's position and dismiss the protest.

Ideal was the apparent low offeror under the RFP. However, a prerequisite for obtaining a DFSC contract for aircraft refueling services is that the successful offeror be a "fixed base operator" (FBO) at the airport where the contract will be performed. Prior to awarding the contract, the DFSC contracting officer determined that Ideal was nonresponsible because it was not an FBO at Bob Sikes Airport. Since Ideal was a small business, the question of its responsibility was referred to the SBA pursuant to Federal Acquisition Regulation (FAR) § 19.602-1 (FAC 84-40). On March 28, after reviewing the information supplied, the SBA informed DFSC that it was unable to issue a COC to Ideal. On March 31, DFSC awarded the contract to Sunshine Aero, Inc., an FBO at Bob Sikes Airport and the only other offeror under the RFP.^{1/}

A responsibility determination concerns whether the bidder has the ability to fulfill the obligations that it offers to assume, and involves such matters as bidder's facilities, equipment and financing. Aviation Specialists, Inc.; Aviation Enterprises, Inc., B-218597; B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174. To the extent that Ideal was determined to be nonresponsible because it was not an FBO as required under the proposed contract, such a determination properly concerns a matter of responsibility--that is, the offeror's ability to meet the material requirements of the contract. See Satellite Services, Inc., B-219679, Aug. 23, 1985, 85-2 CPD ¶ 224. Recognizing that Ideal could not perform as promised in its offer because it lacked the required FBO lease--i.e., Ideal had no facilities at Bob Sikes Airport--the contracting officer properly determined Ideal to be nonresponsible and appropriately referred the issue of the firm's nonresponsibility to the SBA.

^{1/} The record shows that the county accepted Sunshine's bid of \$31,212 annual rent for the FBO lease at Bob Sikes Airport, over Ideal's bid of \$15,555 annually.

The SBA, not our Office, has the statutory authority to review a contracting officer's finding of small business nonresponsibility, and the SBA's determination to issue or refuse to issue a COC is conclusive with respect to all aspects of the small business' responsibility. Short Electronics, Inc., B-231610, Sept. 13, 1988, 88-2 CPD ¶ 233. If Ideal considered DFSC's nonresponsibility determination to be incorrect, it had the opportunity to demonstrate that through its COC application. Id.

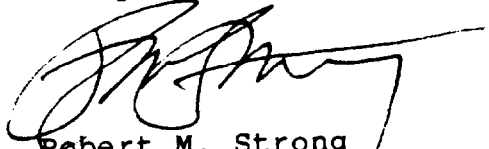
Our Office limits its review of denials of a COC to instances in which the protester makes a showing of either possible fraud or bad faith on the part of contracting officials or that the SBA failed to consider vital information bearing on the firm's responsibility. 4 C.F.R. § 21.3(m)(3); Coliseum Construction, Inc., B-229691, et al., Mar. 1, 1988, 88-1 CPD ¶ 213. Ideal does not allege fraud or bad faith on the part of the contracting agency or the SBA in its protest. Moreover, the record provides no basis for our questioning the SBA's position. Because SBA's decision to issue a COC is generally conclusive on the question of the offeror's responsibility, our Office does not consider protests by a small business that it has been found nonresponsible except in the limited circumstances listed in 4 C.F.R. § 21.3(m)(3), not apparent here.

Ideal summarizes obstacles encountered in its efforts to obtain the FBO lease at Bob Sikes Airport from the county. Ideal alleges unauthorized or unethical conduct on the part of the county officials in awarding the FBO lease to Sunshine. Ideal's sole contention is that it was found nonresponsible because it did not have the FBO lease, due to an alleged illegal delay by county officials in awarding the lease.

The alleged improprieties complained of are grievances against third parties, other than the contracting agency or the SBA, and as such do not form an appropriate basis for a protest to our Office. 4 C.F.R. § 21.1(a). To the extent Ideal alleges unauthorized or unethical conduct at the county level which caused delays in the award of the FBO lease, such matters are between Ideal and the county, and

thus not for review by our Office under our bid protest function. See Advanced Telecommunications Corp., B-233274, Feb. 24, 1989, 89-1 CPD ¶ 204.

The protest is dismissed.



Robert M. Strong
Associate General Counsel