



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dogwood Acres
File: B-236734.2
Date: February 23, 1990

Mark L. Waple, Esq., Hutchens & Waple, for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
David R. Kohler, Esq., for the Small Business Administration.
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The Small Business Administration has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the certificate of competency process.
2. Protest is denied where record does not support protester's contention that the Small Business Administration's (SBA) certificate of competency denial was based on one SBA official's predisposition to award the contract to another bidder.

DECISION

Dogwood Acres protests the decision of the Small Business Administration (SBA) to deny it a certificate of competency (COC) in connection with invitation for bids (IFB) No. F22600-89-B-0030, issued by Keesler Air Force Base, Mississippi, for military family housing maintenance services. Dogwood contends that the SBA official who conducted the COC survey was biased in favor of another bidder and that the COC was consequently denied in bad faith. We deny the protest.

The Air Force received 37 timely bids in response to the solicitation. When bids were opened, Dogwood had submitted the low bid. Because certain items in Dogwood's bid were considered to be unrealistically low priced in comparison with the government estimate and other bids, the agency

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suspected that the bid might contain an error and asked Dogwood to verify its prices. The firm did so, and alleged no error.

The contracting officer then requested the Defense Contract Administration Service Management Area (DCASMA) to conduct a pre-award survey to determine whether Dogwood was responsible to perform under the IFB. DCASMA found that Dogwood had a deficit in working capital and inadequate financial arrangements. It recommended against any award to Dogwood, based on financial capacity. The contracting officer reviewed the survey and other information and noted that Dogwood had no prior experience in military housing maintenance. He also found that the firm did not demonstrate an adequate understanding of the contract requirements, had not proposed adequate manning in its bid, and had underbid for materials. The agency therefore determined that Dogwood was not responsible, and referred the matter to the SBA for consideration under its COC procedures. Subsequently, new financial information concerning Dogwood was made available to DCASMA, which then issued a second report finding Dogwood financially responsible. The contracting officer referred this to the SBA and withdrew the initial pre-award survey's finding of financial incapacity, but maintained his position that all other cited areas of nonresponsibility remained unsatisfactory.

After receiving the initial referral from the contracting officer, the SBA advised Dogwood that the Air Force's nonresponsibility determination was based on the firm's lack of financial capacity, its lack of experience in housing maintenance contracts, its unrealistically low bid for cleaning and painting services, and the inadequacy of its proposed staffing. Dogwood was invited to file an application for a COC. It did so, and the SBA sent an industrial specialist to conduct its own COC survey of the firm. The SBA's COC review committee subsequently voted unanimously to deny Dogwood's COC request, based on its determination that the firm lacked the capacity to perform. This protest followed.

Dogwood alleges that the SBA industrial specialist who conducted the on-site visit and COC survey was openly biased in favor of another bidder and intended to deprive Dogwood of the contract award. The protest includes a number of affidavits from Dogwood employees alleging that the SBA official's statements during his on-site visit evidenced

his prejudice against Dogwood and his intent to direct the award of the contract to the third-low bidder.^{1/}

The SBA, and not this Office, has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the COC process. Oakland Corp., B-230717.2, July 27, 1988, 88-2 CPD ¶ 91. Our review is limited to determining whether bad faith or fraudulent actions on the part of government officials resulted in a denial of the protester's opportunity to seek SBA review, or whether the SBA denial of a COC was made as the result of bad faith or a failure to consider vital information bearing on the firm's responsibility. Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132. In this connection, to show possible fraud or bad faith, we require the protester to present facts that reasonably indicate the government actions complained of were improperly motivated. See Action Building Sys., Inc., B-237067, Oct. 4, 1989, 89-2 CPD ¶ 311; The Forestry Assoc., Inc., B-237225.2, Nov. 17, 1989, 89-2 CPD ¶ 476.

Here, the protester has alleged that an SBA official acted intentionally to prevent it from receiving the award but, in our view, has not submitted support for its allegation. First, the record shows that the protester submitted very low prices for some items. The SBA official questioned the firm on this matter and, in so doing, he referred to the third-low bidder's prices. We find nothing improper with such a comparison. In the context of the agency's concern about the adequacy of Dogwood's bid price to support performance, it was reasonable for the SBA to inquire how the protester's prices could be so much lower than the prices submitted by another bidder. Second, since the record clearly indicates that the SBA had a reasonable basis for denying the COC, and the protester has not refuted the substance of the COC denial, we cannot conclude that the denial was the result of bad faith on the part of the SBA official.

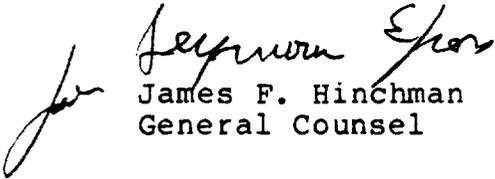
For example, one basis for the nonresponsibility determination was the agency's concern that Dogwood's bid was unrealistically low. Dogwood has not refuted

^{1/} The allegedly biased statements consisted of repeated questioning of Dogwood as to how the firm could underbid the third-low bidder, a contractor which was located next to the Air Force base. The SBA official states that he was merely comparing Dogwood's low bid with that of a previous contractor for the identical services.

the agency's contention that its price was unrealistic other than to insist that its prices are adequate. The record indicates that the SBA repeatedly asked Dogwood to provide a detailed price breakdown, but that the firm did not do so. When questioned about its low prices for specific items such as interior painting and cleaning services, the protester stated that it had provided for all labor costs under item 0001 in its bid. However, when Dogwood's bid is compared with other bids, it is apparent that the protester's price for item 0001 is significantly lower than most of the other bids submitted.

As another example, regarding its level of staffing, the protester has simply asserted that its proposed staffing is "more than adequate because we will use state-of-the-art equipment and competent personnel." However, the record indicates that when the SBA tried to examine Dogwood's labor costs, the firm failed to provide information about the exact number of employees it was proposing to use for various skilled trades. Further, while the proposed contract requires more work than the previous contract, Dogwood has proposed no additional staffing to accomplish the additional tasks. Since the protester has neither refuted the bases for the SBA's denial of the COC nor otherwise shown that it was based on bias or prejudice, we find no support for Dogwood's claim that government officials acted fraudulently.

The protest is denied.


James F. Hinchman
General Counsel