

Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Miklin Corporation--Request for Reconsideration

File: B-236746.3

Date: June 8, 1990

Mark J. Miklin, for the protester.
L. James Tillman, Office of Clearance and Support
Procurement and Assistance Management, Department of Energy,
for the agency.
David R. Kohler, Esq., Office of General Law, Small Business
Administration, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

In awarding a subcontract for the Department of Energy, a private management and operating contractor is not required to submit a nonresponsibility determination to the Small Business Administration for certificate of competency consideration.

DECISION

Miklin Corporation requests reconsideration of our decision, Miklin Corp., B-236746.2, Jan. 19, 1990, 90-1 CPD ¶ 72, in which we denied Miklin's protest against the award of a subcontract to Clark Construction Company under invitation for bids No. 48915-HB, issued by Rockwell International Corporation, which was then the prime contractor managing and operating the Rocky Flats Plant for the Department of Energy (DOE). We denied the protest on the basis that Rockwell reasonably found that Miklin was nonresponsible and that award to Clark, the only other bidder, was therefore proper. Miklin contends that our decision was in error as a matter of law because we did not find that Rockwell was required to submit Miklin's nonresponsibility determination to the Small Business Administration (SBA) for consideration under SBA's certificate of competency (COC) procedures.

We deny the request for reconsideration.

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The solicitation was set aside for small business concerns pursuant to Rockwell's small business subcontracting plan contained in its management and operating (M&O) contract. In its initial protest, Miklin challenged the award of the subcontract to Clark on the basis that Rockwell improperly evaluated additive items which were not awarded as part of the subcontract, and as a result the subcontract was awarded to the high bidder. We did not reach this issue, however, because we found that Rockwell had reasonably determined that Miklin was nonresponsible and, therefore, was not eligible for award, regardless of its price. In its request for reconsideration, Miklin contends that if the true reason for its failure to receive the award was Rockwell's nonresponsibility determination, then Rockwell, through the DOE, was required to submit the matter to the SBA for COC consideration. The protester argues that Federal Acquisition Regulation (FAR) subpart 19.6 requires that where a small business has been determined to be nonresponsible by a contracting officer, the matter be referred to the SBA for a determination of competency.^{1/}

The COC program is available to small business concerns which are otherwise qualified for award of a government contract, but which are determined to be nonresponsible by the government contracting officer. See FAR §§ 19.601. and 19.602. Here, Rockwell, the M&O contractor for the DOE facility, and not the DOE contracting officer, made the nonresponsibility determination. Further, any contractual relationship resulting from this solicitation would be between the offeror and Rockwell, and not with the government, and DOE regulations provide that purchases made by its M&O contractors are not federal procurements, but are commercial purchases subject to the "federal norm."

The "federal norm" refers to those fundamental principles embodied in law and regulation that should be reflected in contractor purchases. 48 C.F.R. § 970.7103(b) (1989). While the federal norm encompasses the fundamental competitive principles of government procurements, it does not include all of the requirements set forth in the statutes and regulations which apply to direct federal

^{1/} Miklin also disagrees with our finding that Rockwell's nonresponsibility determination was reasonably based, but offers no additional evidence that our decision was erroneous.

procurements.^{2/} See BECO Corp., B-219651, Nov. 26, 1985, 85-2 CPD ¶ 601. We do not believe that the federal norm imposes an obligation to comply with the FAR requirement concerning the submittal of a small business concern's nonresponsibility determination to the SBA for COC consideration. In this regard, the SBA has provided a report to our Office stating that it would not have jurisdiction to review the responsibility of an M&O's potential subcontractor under the COC procedures. We find, therefore, that Rockwell was not obligated to submit the question of Miklin's responsibility to the SBA for COC consideration.

The remainder of Miklin's request for reconsideration is essentially a reiteration of its original protest arguments which we have already considered and rejected. Miklin's mere disagreement with our judgment as to the reasonableness of Rockwell's nonresponsibility determination provides no basis to reverse or modify our prior decision. The protester has presented no evidence of error of fact or law establishing that our decision is legally or factually erroneous, thus, there is no basis for reconsideration. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1990); Magnavox Advanced Prods. and Systems Co.--Reconsideration, B-230601.2, Aug. 2, 1988, 88-2 CPD ¶ 108.

The request for reconsideration is denied.

for Robert P. Hinchman
James F. Hinchman
General Counsel

^{2/} M&O contractors are not only obligated to satisfy the federal norm, however, but also to comply with contractual requirements set forth in DOE's regulations. These regulations specifically reference sections of the FAR which are applicable to M&O contractor's commercial purchasing. With respect to the award of contracts to small business concerns, while the DOE regulations, and hence the contract between DOE and Rockwell, specifically reference several applicable FAR provisions, they do not include the FAR sections relating to COC proceedings. See 48 C.F.R. § 970.7104-12 (1989).