

Maeder
146329



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: International Ordnance, Inc.

File: B-246772.2

Date: April 2, 1992

Judith Bartnoff, Esq., and Barbara J. Douglas, Esq., Patton, Boggs & Blow for the protester.
Jacob B. Pompan, Esq., Seymour Copperman, Esq., and James M. Collins, Esq., Pompan, Ruffner & Bass, for Israel Military Industries, Inc., an interested party.
Craig E. Hodge, Esq., and John J. Welling, Esq., Department of the Army, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The contracting agency's agreement to the granting of an additional extension of time for a bidder to apply for a certificate of competency is a matter within the discretion of the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, controlling. The bidder's alleged reliance on oral advice from other than a contracting agency representative that an extension of time would be requested from the Small Business Administration was at the bidder's risk.

DECISION

International Ordnance, Inc. (IOI), a small business concern, protests the rejection of its bid under invitation for bids (IFB) No. DAAA09-91-B-0092, issued by the U.S. Armament, Munitions and Chemical Command (AMCCOM). IOI alleges that the agency thwarted its efforts to apply for a certificate of competency (COC) in connection with this solicitation.

We deny the protest.

AMCCOM determined IOI nonresponsible on July 16, 1991, following a pre-award survey of its facilities by the government.¹ The AMCCOM contracting officer based this determination on the Defense Contract Management Area Office (DCMAO), New Orleans pre-award survey report which found that IOI had unsatisfactory production capability and plant safety, and on the Defense Contract Audit Agency (DCAA) finding that IOI's unfavorable financial condition rendered IOI's ability to perform questionable. On July 31, AMCCOM forwarded the matter to the SBA for consideration under the SBA's COC procedures in accordance with Federal Acquisition Regulation (FAR) § 19.602-1.

Originally, IOI was to file its application for a COC by August 12. This filing date was extended by SBA to August 19 because the DCMAO report could not be prepared by the original deadline.

After the COC referral, IOI continued to submit additional documentation and information related to the government's nonresponsibility determination to the contracting officer. This additional information was forwarded to DCMAO, which subsequently confirmed its initial "no award" recommendation.

By letter dated August 19, SBA notified AMCCOM that IOI had failed to file for a COC and advised that the agency could proceed to make award to the next apparent low bidder. Based on IOI's failure to apply for a COC and the agency's confirmed nonresponsibility finding, IOI was excluded from further consideration for award, and award was made to Security Signals, Inc. on November 15. This protest followed.²

IOI alleges that AMCCOM deprived it of an opportunity to apply for a COC from the SBA. IOI states that after the agency's initial nonresponsibility determination, IOI was "in the process of working with DCMAO to determine if the need for a COC could be obviated and it understood from DCMAO that the COC process accordingly was being held in

¹IOI was the second low bidder. The apparent low bidder was eliminated because the Small Business Administration (SBA) would not issue a COC after the agency found the bidder nonresponsible.

²Israel Military Industries, Inc. also protested the award to Security Signals. On review, the agency agreed with Israel Military Industries that the protested award was in error. The contract with Security Signals was terminated and Israel Military will be awarded the contract, if otherwise appropriate.

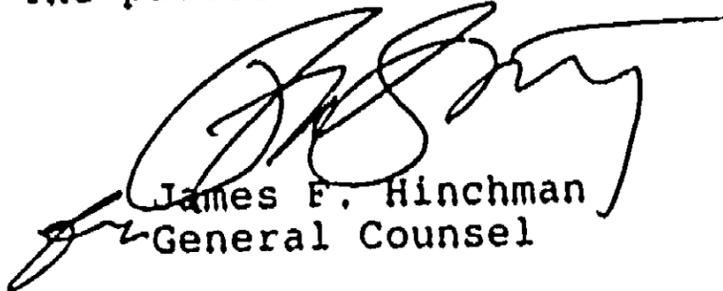
abeyance." Specifically, IOI says that, in a telephone conversation, the DCMAO representative "agreed to request AMCCOM to secure from SBA an indefinite extension of time (in addition to the extension granted until August 19 . . .) for IOI to file its COC application to accommodate DCMAO's need for more time to complete its findings." The protester argues that while "[t]here plainly was no reason for the COC review and the continued DCMAO/AMCCOM review to take place simultaneously," DCMAO and/or AMCCOM did not request SBA to grant IOI a further extension. Consequently, SBA summarily closed the file and advised the agency to proceed with award to the next low bidder. The protester asserts that while it had not chosen to pursue remedies other than the COC process, it was, through no fault of its own, denied the opportunity to use this process because the agency failed "to honor the commitment to secure an extension." Therefore, IOI argues that it is entitled to a second referral of this matter to the SBA.

It is the responsibility of the small business firm determined to be nonresponsible to file a timely, complete and acceptable COC application with the SBA. Pye & Hogan Mach. Co., B-232554, Oct. 7, 1988, 88-2 CPD ¶ 335. The record shows that in lieu of filing for a COC with the SBA, IOI elected to pursue the matter with the agency by submitting additional documentation to the contracting officer, in an effort to convince the contracting officer to reverse the nonresponsibility determination. As to the COC process, IOI claims that it believed the process "was being held in abeyance" because the DCMAO representative "promised" to request an extension of the deadline for filing the COC application with the SBA. The DCMAO representative denies making such a promise, and the agency states that "IOI was never advised by . . . DCMAO personnel that it did not need to file for a COC because additional extensions . . . would be obtained." According to the agency, it advised IOI that "it needed to pursue its COC application with the SBA in addition to providing supplemental information to the agency."

Even if we accept IOI's version of the telephone conversation with the DCMAO representative, it is clear that no extension was subsequently granted, and the protester apparently made no effort to confirm any extension with either the SBA or the agency. The protester does not argue that the contracting agency "promised" to seek an extension, only that the DCMAO representative, who is separate from the contracting agency, "promised" to seek an extension. Under these circumstances, the agency is under no obligation to refer the matter a second time to the SBA. In this regard, the FAR seeks to balance the small firm's interest in receiving an independent evaluation of performance

capability with the agency's interest in proceeding with the acquisition. FAR §§ 19.602-1 and 2(a); Technical Ordnance, Inc., B-236873, Jan. 19, 1990, 90-1 CPD ¶ 73. Our Office will not review an agency's refusal to grant a filing extension for a COC since granting of an extension for filing or processing a COC application is a matter entirely within the contracting agency's discretion. Eagle Sec., Inc., B-242397, Apr. 29, 1991, 91-1 CPD ¶ 415; Pye & Hoqan Mach. Co., supra. The government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, is the controlling factor. Id. As to IOI's allegation that the DCMAO representative promised that an extension would be sought, the agency expressly denies that such a promise was made and, in any case, IOI's reliance on such an alleged oral "promise" is at its risk. See C&T Mktg. Consultants, Inc., B-236865, Jan. 5, 1990, 90-1 CPD ¶ 22.

The protest is denied.



James F. Hinchman
General Counsel