



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

Decision

Matter of: Bullard-Lindsay Contracting Co., Inc.

File: B-252027

Date: May 18, 1993

Barry D. Bullard for the protester,
Elaine A. Eder, Esq., for the Department of Transportation,
David R. Kohler, Esq., for the Small Business
Administration,
Jacqueline Maeder, Esq., and Robert C. Arsenoff, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest against denial of a certificate of competency by the Small Business Administration (SBA) is denied where the record does not support the protester's contention that SBA failed to consider vital information.

DECISION

Bullard-Lindsay Contracting Co., Inc. protests the decision by the Small Business Administration (SBA) to deny it a certificate of competency (COC) in connection with invitation for bids (IFB) No. DTCG81-92-B-3WA103 issued by the Department of Transportation, United States Coast Guard, for the reconstruction of roads and replacement of water mains at the Coast Guard Support Center, Governors Island, New York. Bullard-Lindsay contends that SBA disregarded vital information in denying the COC.

We deny the protest in part and dismiss it in part.

Three bids were received by the September 25, 1992, bid opening. After withdrawal of the apparent low bid on the basis of a mistake in bid, Bullard-Lindsay's bid became low. Following a preaward survey (PAS), the contracting officer determined that Bullard-Lindsay was nonresponsible due to its unsatisfactory performance record. The PAS revealed that Bullard-Lindsay's performance had been rated unsatisfactory as to timeliness and effectiveness of management on three Navy contracts and that, over the past year, Bullard-Lindsay had been delinquent in performing three Coast Guard contracts and had failed to complete punch list items on a fourth Coast Guard project. The PAS also revealed that the Coast Guard was investigating a complaint

from one Bullard-Lindsay employee concerning nonpayment of wages and kickbacks to the employer.

Since Bullard-Lindsay is a small business, on December 4, the contracting officer referred the nonresponsibility determination to SBA for COC proceedings pursuant to Federal Acquisition Regulation § 19.602-1.

On December 23, SBA conducted its own on-site visit of the protester's facility. During that visit, the SBA industrial specialist discussed the company's capabilities, the Coast Guard's nonresponsibility determination and Bullard-Lindsay's responses to that determination with Bullard-Lindsay's president and reviewed documents provided by Bullard-Lindsay with its COC application. The industrial specialist also interviewed contracting officials at other agencies concerning Bullard-Lindsay's performance, as well as prospective subcontractors identified by Bullard-Lindsay.

Based upon this investigation, a "Survey Narrative" was prepared by the industrial specialist, listing four current Bullard-Lindsay contracts and eight closed Bullard-Lindsay contracts. Bullard-Lindsay's performance on three of the four current contracts was rated satisfactory; its delays in performing the other current contract were attributed to both the government and the contractor. Bullard-Lindsay received unsatisfactory performance ratings on seven of the eight closed contracts. These contracts were with four agencies and the unsatisfactory ratings were based on failure to complete work on schedule, poor work quality, inadequate supervision, failure to meet Department of Labor wage guidelines and failure to perform work with Bullard-Lindsay's own personnel as required by the contract. The Survey Narrative stated that Bullard-Lindsay had not demonstrated that the problems were solely the cause of the government. Finally, the Narrative concluded that Bullard-Lindsay's performance record was inadequate for this procurement due to its poor performance record on recently completed government contracts for work of similar or less complexity as the work required under the solicitation at issue.

On December 30, the COC Review Committee unanimously recommended denying a COC to Bullard-Lindsay on the basis of Bullard-Lindsay's performance record. By letter dated December 30, SBA notified Bullard-Lindsay that it would not issue a COC because it found "a lack of assurance that the proposed contract would be completed as required by the solicitation. . . ." SBA specifically found that Bullard-Lindsay's "performance record, technical, quality control and production capabilities are unsatisfactory for this procurement." An SBA representative met with Bullard-Lindsay's president on January 5, 1993, for a debriefing.

Bullard-Lindsay contends that SBA failed to consider vital information in denying the COC. Specifically, Bullard-Lindsay asserts that the Navy and the Coast Guard distorted its record of performance under three completed contracts, alleging that relevant information concerning three contracts was not given to SBA.

We generally do not review SBA's decision to issue, or not to issue, a COC since SBA has the statutory authority to conclusively determine the responsibility of a small business concern, 15 U.S.C. § 637(b) (1988); Joanell Laboratories, Inc., B-242415.16, Mar. 5, 1993, 93-1 CPD ¶ ____; Lida Credit Agency, B-239270, Aug. 6, 1990, 90-2 CPD ¶ 112. We will do so where a protester alleges that 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 that the SBA's denial of a COC was made as the result of bad faith or the contracting officer's failure to provide SBA with vital information bearing on the firm's responsibility. Joanell Laboratories, Inc., supra; COSTAR, B-240980, Dec. 20, 1990, 90-2 CPD ¶ 509; Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132. Bullard-Lindsay asks that we review the matter on the grounds that SBA reached its decision without considering vital information. Bullard-Lindsay argues that if SBA had reviewed this vital information, SBA would not have declined to issue a COC to the protester.

On one Navy contract, N62472-91-C-4037 (-4037), Bullard-Lindsay contends that SBA failed to consider that Bullard-Lindsay's work was disrupted by another contractor and that any unsatisfactory results were beyond Bullard-Lindsay's control. Bullard-Lindsay alleges that the cause of the disruption to contract performance was not made available to SBA.

SBA's Survey Narrative recommending that Bullard-Lindsay be denied a COC noted that Bullard-Lindsay had protested its unsatisfactory performance rating on contract -4037, alleging that "deficiencies were the result of government caused problems." The Narrative stated that Bullard-Lindsay alleged that "the government allowed another contractor on the job site which destroyed work that [Bullard-Lindsay] had already performed."

Similarly, on a second Navy contract, N62472-91-C-5531 (-5531), Bullard-Lindsay alleges that the Navy failed to explain that work on a concrete containment trough could not be properly completed because of the government's poor design and that its delay in finishing the contract work was caused by the government's failure to approve Bullard-Lindsay's submittals and to otherwise cooperate with Bullard-Lindsay.

While the issue of the design of the containment trough under contract -5531 is not discussed in the Narrative, the SBA industrial specialist submitted a sworn affidavit as part of SBA's report on the protest, stating that Bullard-Lindsay's president "informed me of his allegations that the problems [Bullard-Lindsay] experienced with the containment trough were caused by poor design and that the Navy interfered with contract performance by, among other things, failing to approve submissions." Bullard-Lindsay does not rebut this statement.

Finally, Bullard-Lindsay argues that its delinquency on Coast Guard contract No. D7CG81-92-C3WA077 (-C3WA077) was due to changed work orders and that this information was not provided to SBA.¹

Contrary to Bullard-Lindsay's assertion, the Survey Narrative did not conclude that Bullard-Lindsay was delinquent on Coast Guard contract -C3WA077. Indeed, the Narrative states that "[t]he Coast Guard claims . . . [Bullard-Lindsay] is behind schedule and is only 20% complete and will not be able to complete the job on time." The Narrative further states that the industrial specialist observed Bullard-Lindsay's employees working on this contract and that "[t]he work was significantly more than 20% completed" and that the Coast Guard contract inspector told the industrial specialist that the work would probably

¹In its comments on the agency report, Bullard-Lindsay for the first time alleges that SBA failed to consider vital information regarding its performance on eight other contracts reviewed by SBA. However, the record shows that the protester knew about these matters when it initially filed its protest since, as noted above, an SBA representative met with Bullard-Lindsay's president on January 5 for a debriefing and "read the [p]erformance [r]ecord section of the [Survey Narrative] to [Bullard-Lindsay's president]." The performance record of the Narrative lists all of the contracts reviewed by SBA and provides the industrial specialist's findings and determinations for each contract. The protester does not argue otherwise. The protester's submission of these arguments in its protest comments is therefore untimely. Our Bid Protest Regulations provide that a protest such as this one must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier, and do not contemplate the piecemeal presentation or development of protest issues. 4 C.F.R. § 21.2(a)(1) (1993); Controls Eng'g Maintenance Corp., B-247833.2, Sept. 25, 1992, 92-2 CPD ¶ 204. Accordingly, the allegations are dismissed.

be completed by the end of January. The SBA Narrative specifically stated "[Bullard-Lindsay] is currently on schedule with the contract and is expected to complete the contract on schedule." Therefore, while no mention was made of change orders, Bullard-Lindsay was not prejudiced because it was not faulted for delinquency on this contract.

In sum, there is no indication that the contracting officer failed to provide SBA with vital information concerning Bullard-Lindsay's current or closed contracts. Indeed, the report on the protest from the SBA to our Office shows that SBA was aware of the "vital information" pointed to by the protester.

Bullard-Lindsay also insists that while it "may have had problems in its past performance, as the Narrative indicates, its present performance is exceptional and these problems have been alleviated." However, Bullard-Lindsay has not identified any specific vital information that SBA disregarded in this context, and as noted above, the Narrative shows that SBA considered all of the explanations concerning its performance which were offered by Bullard-Lindsay during the course of the COC proceeding. Consequently, all Bullard-Lindsay has established is that it disagrees with SBA's conclusion and the fact that the protester may disagree with SBA's conclusion does not constitute a showing that SBA failed to consider vital information in reaching its conclusion regarding the protester's responsibility. Fastrax, Inc., supra.

The protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel