



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Government Contract Advisory Services, Inc.

File: B-255918; B-255919

Date: March 8, 1994

D. Lee Roberts, Jr., Esq., Smith, Currie & Hancock, for the protester.

Jennifer D. Westfall-McGrail, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest raising same issues as those resolved in a recent decision on a protest by the same protester is dismissed as no useful purpose would be served by further consideration of the protest.

2. Multiple nonresponsibility determinations under contemporaneous procurements do not constitute de facto suspension or debarment where there is no evidence that the determinations were part of a long-term disqualification attempt by the agency.

DECISION

Government Contract Advisory Services, Inc. (GCAS) protests the determination by the Small Business Administration (SBA) that it is not eligible for a certificate of competency (COC) under two solicitations, invitation for bids (IFB) Nos. DAHA25-93-B-0002 and DAHA25-93-B-0011, issued by the Departments of the Army and Air Force, National Guard Bureau. The protester also argues that the contracting officer's initial determinations of nonresponsibility, which resulted in the referrals to the SBA, had no rational basis.

We dismiss the protests in part and deny them in part.

The contracting officer determined under both solicitations that GCAS was nonresponsible and referred the matter to the SBA. The SBA determined that GCAS did not intend to perform a significant portion of the work with its own resources and that therefore the company was ineligible for a COC under 13 C.F.R. § 125.5(b) (1993), which provides that a "concern shall not be eligible for a [COC] unless it performs a

significant portion of the contract with its own facilities and personnel."

GCAS argues that it provided SBA with information to establish that it intended to perform at least 20 percent of the work with its own personnel and that SBA's determination that it would not perform a significant portion of the work was therefore unreasonable. GCAS also argues that SBA violated its own regulations by determining that the firm does not intend to perform a significant portion of the work; the protester states that the regulation permits SBA to view a company as ineligible for a COC only where the company indicates that it will not so perform.

The issues raised in these protests are identical to those resolved in Government Contract Advisory Servs., Inc., B-255989; B-255990, Jan. 18, 1994, 94-1 CPD ¶ ____, which involved determinations by the SBA that GCAS was not eligible for COCs under two General Services Administration solicitations. The protester here relies on the same arguments it forwarded in the earlier case in which we held that the SBA's decision that a bidder is ineligible for a COC because it will not perform a significant portion of the work is tantamount to an affirmation of the procuring agency's determination of nonresponsibility, and is therefore not a matter for our review absent a showing of fraud or bad faith. We also held that although we will review a contracting officer's decision that a small business is nonresponsible where the SBA declines to issue a COC for eligibility rather than responsibility reasons, Wallace & Wallace, Inc.; Wallace & Wallace Fuel Oil, Inc.-- Recon., B-209859.2; B-209860.2, July 29, 1983, 83-2 CPD ¶ 142, we will not do so where the SBA determines that the business is ineligible for a COC pursuant to 13 C.F.R. § 125.5(b) since, as stated above, we view such determinations of ineligibility as affirmations of the contracting officer's decision.

Since the issues raised by GCAS in this protest are identical to those we resolved in our decision of January 18, we see no useful purpose to be served by our further consideration of the protest. Wallace O'Connor, Inc., B-227891, Aug. 31, 1987, 87-2 CPD ¶ 213. Accordingly, we dismiss these grounds of protest.

The protester also argues that the agency's refusal to award it these two contracts, as well as a third one where the protester submitted the low responsive bid¹, based on

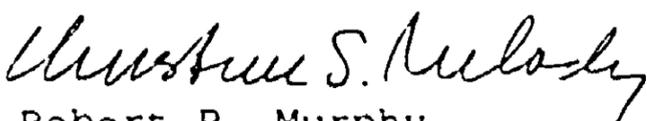
¹GCAS protested the SBA's determination under IFB No. DAHA20-93-B-0006 that GCAS was not eligible for a COC,
(continued...)

concurrent findings of nonresponsibility, constitutes a de facto suspension or debarment of the firm.

A de facto debarment occurs where a firm is excluded from contracting because a contracting agency makes repeated determinations of nonresponsibility, or even a single determination of nonresponsibility as part of a long-term disqualification attempt, without following the procedures for suspension or debarment set forth in Federal Acquisition Regulation Subpart 9.4. Standard Tank Cleaning Corp., B-245364, Jan. 2, 1992, 92-1 CPD ¶ 3.

Although the protester claims that since the three determinations of nonresponsibility were made concurrently the agency was making a de facto debarment, we think that the concurrency of the determinations demonstrates that they were not part of a long-term disqualification attempt; that different contracting officers reached the same conclusion regarding the protester's responsibility at the same time is merely a reflection of the fact that the determinations were based on the same current information. See id.; Becker and Schwindenhammer, GmbH, B-225396, Mar. 2, 1987, 87-1 CPD ¶ 235. Further, unless a protester alleging bias against it on the part of contracting officials can prove that those officials intended to harm the protester--which GCAS has not done here--we will presume that the contracting officials acted in good faith. Bannum, Inc., B-249758, Nov. 24, 1992, 92-2 CPD ¶ 373. We therefore deny this basis of protest.

The protests are dismissed in part and denied in part.


for Robert P. Murphy
Acting General Counsel

¹(...continued)
as well as the contracting officer's initial determination of nonresponsibility, at the same time it protested these determinations under IFB Nos. DAHA25-93-B-0002 and DAHA25-93-B-0011. We dismissed GCAS's protest regarding this solicitation as academic on January 27, 1994, however, because on January 14 our Office sustained the protest of another bidder and recommended that the IFB be canceled and reissued as a small disadvantaged business set-aside. Building Servs. Unlimited, Inc., B-254743, Jan. 14, 1994, 94-1 CPD ¶ ____.