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# Decision

**Matter of:** Calvary Contracting, Inc.

**File:** B-424024

**Date:** January 13, 2026

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## DIGEST

Protest challenging the agency's initial non-responsibility determination and subsequent affirmance after the Small Business Administration (SBA) refused to issue the protester a certificate of competency (COC) is denied as legally and factually insufficient where our Office does not generally review protests challenging the SBA's refusal to issue a COC absent circumstances not present here.

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## DECISION

Calvary Contracting Inc., a service-disabled veteran-owned small business (SDVOSB) of Tipp City, Ohio, protests its elimination from the competition under invitation for bids (IFB) No. 36C25025B0022, which was issued by the Department of Veterans Affairs (VA), for renovation work at the Chillicothe VA Medical Center in Chillicothe, Ohio. The protester argues that the agency unreasonably determined that the protester was non-responsible and referred the firm to the Small Business Administration (SBA) for a certificate of competency (COC), and then also erred by confirming that the firm was ineligible for award after the SBA refused to issue the firm a COC.

We dismiss the protest because it fails to state legally or factually sufficient bases of protest.

## BACKGROUND

The IFB was issued on June 4, 2025, and subsequently amended once, pursuant to the sealed bidding procedures of Federal Acquisition Regulation (FAR) part 14. Agency Report (AR), Tab 2, IFB at 1.<sup>1</sup> The IFB, which was issued as a SDVOSB set-aside, sought bids for renovation work at the Chillicothe VA Medical Center in Chillicothe, Ohio. *Id.* Relevant here, the IFB established a period of performance of 910 calendar days from the issuance of the notice to proceed. *Id.*

The agency received five timely bids; Calvary submitted the lowest-priced bid of \$10,675,960. Contracting Officer's Statement (COS) at 1. As the apparent low bidder, the contracting officer proceeded to conduct a responsibility determination for Calvary. The contracting officer concluded that the protester was non-responsible based principally on a termination for default for contract No. 36C25020C0263, as well as other adverse past performance identified during a review of the protester's past performance records in the Contractor Performance Assessment Reporting System (CPARS). Consistent with the requirements of FAR section 9.104-3(d)(1), because Calvary is a small business concern, the contracting officer referred the non-responsibility determination to the SBA for a COC determination. See COS at 1.

The VA's August 18, 2025, COC referral explained to the SBA that "[t]his project is the number one priority for Chillicothe VA Medical Center, requiring phasing which requires careful attention to scheduling," and that delays due to poor scheduling would result in higher costs and impact patient care. AR, Tab 4, VA COC Referral at 1. The contracting officer explained that he found the protester to be non-responsible because the protester "poses *high risk* as shown on many projects" because the protester "struggles to meet scheduling requirements." *Id.* In support of this finding, the contracting officer addressed the above-referenced termination for default on a renovation project at the Dayton VA Medical Center in Dayton, Ohio.<sup>2</sup> *Id.* at 2-7. In addition to the termination for default, the contracting officer also represented that he reviewed adverse past performance information that further raised scheduling-related concerns, including an interim CPARS report for contract No. 36C25021C0127 that reflected a marginal rating for schedule.<sup>3</sup> *Id.* at 8. Lastly, the contracting officer

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<sup>1</sup> References herein to page numbers for agency report or protest exhibits are to the electronic pagination.

<sup>2</sup> The termination for default is the subject of a pending appeal before the Civilian Board of Contract Appeals (CBCA). See, e.g., Comments, exh. A, CBCA Complaint; AR, Tab 4, VA COC Referral at 7 (stating that "VA is vigorously defending its termination for default at CBCA and is confident the Board will uphold the termination for default").

<sup>3</sup> The protester appears to discount the contracting officer's representation that the specific cited references were only examples of "a few, among many . . . that show Calvary's lack of scheduling aptitude," AR, Tab 4, VA COC Referral Letter, arguing:

(continued...)

addressed Calvary's feedback on VA's pre-award survey, as well as information obtained from two references identified by Calvary. *Id.* at 10-20. Of note, both references identified schedule concerns arising on projects performed by Calvary. See, e.g., *id.* at 14-15 (with respect to contract No. 36C25020C0124, the reference described delays in completing the punch list items and explained that contracting officials "did have several meetings with Calvary and informed the company of their non-compliance with the contract," and that "[i]n addition, the management team was not as accommodating towards the end of the project" and "[t]he superintendent and workers, on occasion, did not report to the site"); 15 (with respect to contract No. 36C25021C0249, the reference provided that "[d]uring the first couple of phases, the company was doing a very good job with no issues but the project is coming towards the end and a lot of work is not getting accomplished," and that "[t]he VA and Calvary had a meeting three weeks ago with the owner to indicate that the schedule is falling a little behind"); 18-19 (with respect to contract No. 36C25021C0127, discussing unsatisfactory assessments for schedule, management, and regulatory compliance).

On August 22, 2025, the SBA notified Calvary that the VA contracting officer rejected the protester's bid "because of [Calvary's] unacceptable past performance record and production capability," and provided instructions for how Calvary could apply for a COC from SBA. Protest, exh. 7, SBA COC Application Instructions at 72. The letter further notified Calvary that "SBA personnel will perform an independent review of your capabilities to meet the requirements of [the] solicitation," but also warned that "[i]t must

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(...continued)

As support for its concern about Calvary's responsibility, the VA repeatedly relied solely on the single Termination for Default that the requesting Contracting Officer gave Calvary. The VA's letter to the SBA suggested that issues with scheduling occurred more frequently than that singular terminated effort and vaguely referenced multiple CPARS records to support its argument. Yet, the details the VA included in its correspondence to the SBA related only to the single Termination for Default and one isolated *interim* CPAR for another contract (36C25021C0127) performed during 2023 and 2024.

Comments at 4 (internal citations omitted).

However, consistent with the contracting officer's representation about multiple examples, Calvary's own COC application to the SBA identified other instances of adverse past performance involving scheduling and management reflected in other CPARS reports (which the protester also contested or otherwise took exception to). See, e.g., Protest, exh. 8, Calvary COC Application, at 86 (discussing marginal ratings for contract Nos. VA25012D0001 and VA25015J2400), 88 (same for schedule and commissioning HVAC systems for contract No. VA25015C0070), 89 (same for schedule and management for contract No. VA36C25019C0265), 89-90 (same, with respect to contract No. VA25016C0034).

be emphasized that it is solely your responsibility to demonstrate competence to perform.” *Id.*

On September 2, 2025, Calvary submitted its COC application to SBA. Relevant here, the protester provided a “preliminary schedule” for the Chillicothe VA Medical Center project, assuming a November 3, 2025, notice to proceed date. Protest, exh. 9, Calvary COC Application at 105. As noted above, the IFB required a period of performance not to exceed 910 calendar days; using the notional November 3, 2025 start date, the project would need to be completed by no later than May 1, 2028. Calvary’s schedule, however, reflected a completion date of May 7, 2029. *Id.* at 108. The protester subsequently represents that this discrepancy was the result of “a clerical error [ ] made in preparation of the schedule where an option of using ‘work days’ or ‘calendar days’ was set to work days, thus causing the schedule to extend beyond the allotted time period.” Protest, exh. 11, Decl. of Calvary President at 115.

On September 15, 2025, the SBA notified both Calvary and the VA that SBA declined to issue a COC for Calvary. AR, Tab 5, SBA Letter at 2. As set forth in the letter, the SBA stated that it “finds a lack of assurance that the proposed contract would be completed as required by the solicitation and further finds no sufficient reason for disagreeing with the decision of the contracting officer.” *Id.* The protester represents that in a subsequent September 24 telephone conversation, an SBA official:

[I]nformed Calvary that the [COC] was denied solely because Calvary’s preliminary schedule indicated that the project would be completed approximately one year later than required by the Solicitation. Unlike the proposal Calvary submitted to the VA in July 2025, the schedule Calvary provided to the SBA on September 2, 2025 erroneously utilized working days rather than calendar days when calculating the contract duration.

Comments at 5; see *also* Protest, exh. 11, Decl. of Calvary President at 6.

On September 25, the SBA subsequently made award to the next lowest bidder, Veterans Contracting, Inc. for \$10,699,000. COS at 2. This protest followed.<sup>4</sup>

## DISCUSSION

The Small Business Act, 15 U.S.C. § 637(b)(7) gives the SBA, not our Office, the conclusive authority to review a contracting officer’s determination that a small business is not responsible. In this regard, when a procuring agency finds that a small business is not eligible for award based on a non-responsibility determination or a failure to satisfy definitive responsibility criteria, the agency is required to refer the matter to the

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<sup>4</sup> In addition to filing this protest with our Office, Calvary represents that it has also filed a request for reconsideration of the denial of the COC with SBA. See Protest, exh. 13, Request for Recon.

SBA for a final determination under its COC procedures. FAR 19.602-1(a)(2), 19.602-4(b); *All Phase Sols., LLC*, B-420376, Jan. 31, 2022, 2022 CPD ¶ 49 at 4. We therefore do not review challenges to the SBA's decision not to issue a COC unless there is a showing that the COC denial resulted from (1) possible bad faith on the part of government officials, (2) SBA failing to follow its own published regulations, or (3) SBA failing to consider vital information because of how information was presented to, or withheld from, the SBA by the procuring agency. 4 C.F.R. § 21.5(b)(2); see also *Tunica-Biloxi Servs., LLC*, B-422571, July 26, 2024, 2024 CPD ¶ 182 at 4 (denying protest where the protester's own error caused the procuring agency to include incorrect contact information in the COC referral letter); *All Phase Sols., supra*, at 5-6 (dismissing protest alleging that SBA was required to allow the protester to substitute unacceptable proposed key personnel as part of the COC process).

Notwithstanding these limited prescribed circumstances under which we will consider the denial of a COC, the protester expressly disavows that its protest before our Office challenges any actions of the SBA. See Comments at 6 ("Calvary is not challenging SBA's determinations in this protest."). Nor does the protester specifically allege that VA officials assessed its responsibility or referred the firm to the SBA for a COC in bad faith.<sup>5</sup> Rather than attempt to fit its protest allegations within one of the enumerated exceptions that our Office will consider, the protester asserts that it "only protests *how* the VA evaluated its proposal both in advance of and after the referral" to SBA. *Id.* For the reasons that follow, we find that neither alleged basis of protest sets forth legally or factually sufficient bases of protest.

Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the stated grounds be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). This requirement contemplates that protesters will provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of

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<sup>5</sup> We have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. *Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 6 n.4. The burden of establishing bad faith is a heavy one; the protester must present facts reasonably indicating, beyond mere inference and suspicion, that the actions complained of were motivated by a specific and malicious intent to harm the protester. *AeroSage, LLC*, B-417289.2, May 14, 2019, 2019 CPD ¶ 180 at 2 n.2. As discussed herein, while the protester challenges as unreasonable the agency's initial adverse responsibility determination and subsequent decision to uphold its initial non-responsibility determination following the SBA's refusal to issue the protester a COC, none of these allegations allege -- let alone establish with convincing proof -- bad faith on the part of VA personnel.

improper agency action. *Navarre Corp.*, B-423602, Aug. 14, 2025, 2025 CPD ¶ 197 at 2.

As to the protester's complaints regarding the agency's initial evaluation of the firm's bid and resulting non-responsibility determination and referral to SBA, our Office has dismissed such allegations from small business concerns where such responsibility determinations are subject to the SBA's conclusive authority. See, e.g., *Kerr Contracting Corp.--Recon.*, B-242213.2, Mar. 18, 1991, 91-1 CPD ¶ 296 at 1; *Total Counseling Serv.*, B-240774, Dec. 3, 1990, 90-2 CPD ¶ 448 at 3; *SMK Precision Machine Tools Corp.*, B-239041.2, Aug. 6, 1990, 90-2 CPD ¶ 105 at 2; *Custom Research, Inc.--Recon.*, B-238976.2, June 14, 1990, 90-1 CPD ¶ 567 at 1. Indeed, this is the very purpose of the COC process; that is, to protect small businesses from arbitrary non-responsibility determinations made by procuring agencies. See *Custom Research, Inc.--Recon.*, *supra* at 2. To the extent that Calvary was dissatisfied with the agency's initial evaluation and non-responsibility determination, its recourse was with the SBA through the COC process, not through our bid protest process.

The protester's arguments alleging that the agency effectively unreasonably relied on the SBA's denial of a COC for the protester when affirming its initial non-responsibility determination similarly fail to state legally or factually sufficient bases of protest. In this regard, the protester argues that notwithstanding SBA's denial of the COC, the agency was required to allow the protester to correct errors made by the protester in its correspondence with the SBA. Specifically, it is apparent that SBA's decision to deny the COC was based on Calvary's own insufficient COC application. Calvary itself concedes that its proposed project schedule submitted to SBA during the COC process was incorrect, specifically that "the schedule Calvary provided to the SBA on September 2, 2025 erroneously utilized working days rather than calendar days [ ] when calculating the contract duration." Comments at 5.

Notwithstanding the protester's own conceded failure to adequately respond to the SBA's COC inquiry, the protester argues that the agency was required to allow the protester to correct its erroneous COC application. Specifically, the protester invokes the provision of FAR 14.407-2, Apparent clerical mistakes, to argue that the VA was obligated to allow correction of Calvary's erroneous schedule provided to SBA in its COC application. Comments at 9-10. This argument is unavailing. On its face, the provision applies only to any clerical mistake "apparent on its face *in the bid*." FAR 14.407-2(a) (emphasis added). Here, the error was not included in the bid, but, rather, was introduced by the protester in response to SBA's COC inquiry. To the extent the SBA, which has conclusive authority over such matters, effectively affirmed the agency's initial non-responsibility determination based on the protester's inadequate

COC application, the protester fails to identify any applicable procurement law or regulation requiring the agency to disregard the SBA's conclusive finding.

The protest is dismissed.

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