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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-189115

DATE: October 31, 1977

MATTER OF: Inflated Products Company, Inc.

DIGEST:

Contracting officers are encouraged to reconsider finding of nonresponsibility after SBA denial of issuance of certificate of competency where new information, probative of bidder's responsibility, comes to light between denial of COC and date of contract award. Absent bad faith or fraud, GAO will not review a contracting officer's finding of nonresponsibility upon reconsideration after denial of a COC where it appears that the bidder's new information has been fully considered.

Inflated Products Company, Inc. (Inflated Products), protests any award to any other bidder under solicitation No. DAAK01-77-E-5011 issued by the United States Army Troop Support Command. Inflated Products contends that it is now the low responsive, responsible bidder.

The record in this matter shows that the contracting officer, after a preaward survey, found Inflated Products to be nonresponsible on the basis of past performance and for lack of financial capacity and referred the matter to the Small Business Administration (SBA) on July 28, 1977. On August 18, 1977, the SBA issued its determination not to award a certificate of competency (COC) to Inflated Products. On October 3, 1977, Inflated Products filed this protest, contending that it has new information, forwarded by message dated October 5, which shows it to be a responsible bidder. The contracting officer states that all information submitted by Inflated Products, up to and including the message of October 5, has been considered and reconsidered and he still finds Inflated Products to be nonresponsible.

As we stated in Inflated Products Company, Incorporated, B-188319, May 25, 1977, 77-1 CPD 365:

"In the recent cases of Precision Electronics Labs, B-186251, October 29, 1976, 76-2 CPD 369, and Crawford Development and Manufacturing, B-188110, March 15, 1977, 77-1 CPD 193, we stated our willingness to recommend reassessment of the responsibility of a prospective contract where it appears that either SBA or the agency failed to consider all relevant information. Although we do not review the agency's initial determination that a small

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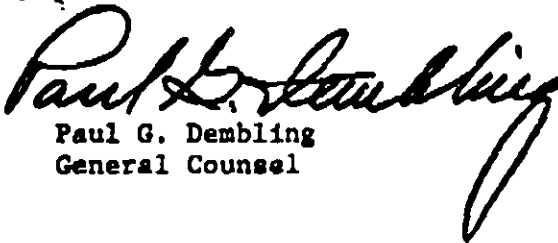
business is nonresponsible when the question has been referred to SBA and the agency's determination is affirmed, see Marine Resources, Inc., B-179738(1), February 20, 1974, 74-1 CPD 82, we do not treat the denial of a COC as dispositive where, during the period between the COC denial and contract award, information probative as to the bidder's responsibility comes to light for the first time. Precision Electronics Labs and Crawford Development and Manufacturing, supra, and 53 Comp. Gen. 347 (1973). Even in those cases, however, we have limited our review to recommending that the agency reassess the bidder's responsibility where such newly available information has not been considered. See, Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31; Gallery Industries, Inc., B-185963, April 16, 1975, 76-1 CPD 262.

* * * * *

"We would agree that the contracting officer should make his final determination of responsibility not on the basis of 'stale' information, but on the basis of information made available as closely as practicable to the contract award. See 53 Comp. Gen. 344 (1973). At the same time, we do not believe a bidder can reasonably expect the Government to withhold award interminably while the bidder attempts to cure the causes for its being found nonresponsible. We believe this is especially true where, as here, the contracting officer's negative determination is affirmed by the SBA's denial of the COC."

Absent bad faith or fraud, we will not review a contracting officer's finding of nonresponsibility upon reconsideration where the SBA has previously denied issuance of a COC and it appears that the bidder's new information has been fully considered. To do otherwise would be to substitute our judgment for that of the cognizant contracting officials.

We perceive no such bad faith on the part of contracting officials in this case. Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel