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DECISION

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

81-1 CPD 429

FILE: B-198844.4

DATE: June 1, 1981

MATTER OF: Rosenfeld, Steinman & Blau

DIGEST:

Where small business concern has been found not responsible, matter is for determination by Small Business Administration (SBA) under Certificate of Competency (COC) procedures; GAO will not review such SBA determinations where protester fails to make prima facie showing of fraud or that information vital to responsibility determination has not been considered.

Rosenfeld, Steinman & Blau (RSB), a small business concern, protests the contracting officer's determination that it is a nonresponsible firm and therefore ineligible for award under the Small Business Administration's (SBA) request for proposals (RFP) No. SBA-7(j)-MSB-80-2. RSB also protests the refusal of SBA to issue it a Certificate of Competency (COC) and the contracting officer's subsequent decision to cancel certain items in the solicitation.

The RFP requested offers to provide technical and management assistance to eligible small business concerns within designated geographical areas. RSB was the low acceptable offeror for the areas of Connecticut and Puerto Rico. However, the contracting officer determined that RSB was not responsible by reason of its failure to apply tenacity and perseverance to do an acceptable job as evidenced by performance as the incumbent contractor for these services. Basically, the contracting officer believed that RSB was delinquent in the submission of task reports under task orders issued pursuant to its prior contract and that RSB's task reports, in general, were less than satisfactory. The nonresponsibility determination was based on a memorandum prepared in connection with the pre-award survey which was performed

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by SBA's Newark District Office (NDO). The memorandum contained a listing of a total of 57 task orders issued by SBA to RSB under the previous contract, the date each task order was issued, and the due dates and submission dates for each such order. NDO concluded that "out of 57 tasks issued, the contractor was on time or earlier in only four cases."

On August 6, 1980, the contracting officer submitted the matter to SBA's New York Regional Office for processing under the COC procedures. The COC Review Committee declined to issue a COC. The contracting officer thereafter canceled the solicitation for the areas of Connecticut and Puerto Rico because he believed the remaining prices to be unreasonable in view of the seven month delay since receipt of proposals.

Briefly, RSB contends that the contracting officer's nonresponsibility determination and the refusal by SBA to issue a COC were made "in total disregard of the facts." It is RSB's position that it performed satisfactorily under its prior contract. In this regard, RSB provided the SBA with a detailed written rebuttal on August 28, 1980, prior to the COC denial, which addressed in detail each task order issued under the previous contract and explained the reasons for the delays. In this memorandum, RSB asserted that, except for one instance, all delays were caused by circumstances beyond the control of RSB, such as difficulties in setting up appointments with small business concerns, late receipt of necessary data from either SBA or the small business concern, and SBA administrative delays. RSB further maintains that the contracting officer was continually apprised, verbally and in writing, of the problems encountered during contract performance which caused delays in providing services and in submitting task reports. However, RSB states that the SBA never formally adjusted the due dates for the submission of task order reports so that they were submitted "technically late" by reason of SBA's inaction.

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RSB argues that the sole basis for the contracting officer's nonresponsibility determination and SBA's subsequent denial of the COC is the memorandum prepared by NDO in connection with the pre-award survey. According to RSB, this document, which is the only evidence supporting SBA's actions, is merely a raw statistical summary of dates and makes no attempt to analyze or explain the actual circumstances. RSB further argues that its August 28, 1980 detailed submission is the only document which analyzes and shows in detail RSB's performance under each task order issued under the prior contract. RSB states as follows:

"The facts which were available to the SBA clearly established that [RSB's] performance of the [prior] contract were satisfactory.
 * * * [T]he only evidence which addresses the [prior] contract in detail is RSB's August 28, 1980 submission. * * * Thus, the SBA's determination of nonresponsibility and denial of a COC were made in total disregard of the facts."

We believe that RSB is essentially arguing that the overwhelming weight of evidence available to the COC Review Committee established its satisfactory performance under the prior contract. Thus, the COC Review Committee, by its decision to deny RSB a COC, "totally disregarded the facts" and failed to consider the detailed analysis submitted by RSB on August 28, 1980. Our Office is not, however, an appellate forum with authority to review the merits of individual determinations by SBA under its COC program. Rather, the final determination as to whether a small business concern is responsible for a particular procurement is made by the SBA under its COC procedures. 15 U.S.C. § 637(b)(7) (Supp. I 1977). Our Office does not review SBA determinations unless there is a prima facie showing of fraud or that information vital to a responsibility determination has not been considered. Gupta Carpet Professionals, Inc., B-196051, October 25, 1979, 79-2 CPD 294; Wilson and Hayes, B-199144, July 24, 1980, 80-2 CPD 66, and cases cited therein. We do not believe that either of these exceptions applies in this case.

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RSB has not alleged fraud on the part of the SBA and we have found no evidence in the record that vital evidence was improperly disregarded in the course of the responsibility evaluation. Indeed, the SBA clearly states that all the facts were duly considered by the COC Review Committee in its deliberations. The sole ground for the protest appears to be an alleged lack of sufficient evidentiary basis for SBA's denial of a COC. This provides an insufficient basis for our review and since our Office also does not review a contracting officer's determination of nonresponsibility where the determination has been affirmed by the SBA's denial of a COC, Wilson and Hayes, supra, the only question remaining is the cancellation of certain items in the solicitation. In this regard, the protester has not attempted to show any impropriety with respect to the cancellation other than the allegedly wrongful actions of the SBA in disqualifying it from award which ultimately prompted the cancellation. Since we have not found any impropriety in SBA's actions concerning the denial of the COC, it is our view that the protester has not met the burden of proof with respect to any other ground for questioning the propriety of the cancellation. We therefore decline further consideration of this protest.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel