



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Deval Corporation

File: B-272001

Date: August 14, 1996

Robert G. Fryling, Esq., and Edward J. Hoffman, Esq., Blank, Rome, Comisky & McCauley, for the protester.

Eric A. Lile, Esq., Gerald M. Dougherty, Esq., and Harry D. Boonin, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably declined to reverse nonresponsibility determination based on new information presented to agency after Small Business Administration had twice declined to issue a certificate of competency where the new information concerning personal lines of credit available to the protester's offerors did not establish that the offeror had the financial capacity to perform the contract.

DECISION

Deval Corporation protests the rejection of its offer under request for proposals (RFP) No. N00383-95-R-0274, issued by the Naval Inventory Control Point (NAVICP) for the repair and/or modification of 16 line items of Armament Handling Equipment (AHE). The protester argues that the contracting officer unreasonably declined to find the offeror responsible on the basis of new information submitted to the agency after the Small Business Administration (SBA) had twice declined to issue Deval a certificate of competency (COC).

We deny the protest.

The RFP, issued on June 26, 1995, contemplated the award of a firm, fixed-price, 3-year requirements contract, with two 1-year option periods. Award was to be made to the low-priced responsible offeror. Two offers were received by the October 13 amended closing date for receipt of proposals. Deval submitted the apparent low offer.

A pre-award survey of Deval was requested by the contracting officer. As part of the survey, the Defense Contract Management Area Operations, Philadelphia (DCMAO) reviewed Deval's accounting system and financial capability. DCMAO

recommended "No Award" based on Deval's lack of sufficient financial resources to absorb the work under this RFP into Deval's current backlog of work and also meet its current obligations. During the pre-award survey, DCMAO had requested Deval to provide a bank commitment letter or some other evidence of outside financial support to augment Deval's financial resources, but Deval failed to provide any additional information. Based upon the negative pre-award survey, on January 30, 1996, the contracting officer found Deval nonresponsible.

By letter dated February 1, the matter was referred to the SBA for COC consideration. On February 29, the SBA notified the contracting officer and Deval that it declined to issue a COC. The SBA's letter to the protester stated that "[w]e are unable to overcome the procuring agency's determination that your firm is not responsible from a financial perspective," and referred to Deval's \$600,000 working capital deficit and negative net worth of \$700,000, as well as Deval's failure to provide evidence of available outside financing as its reasons for declining to issue a COC.

The same day that the contracting officer received SBA's decision, he received additional financial information concerning Deval. The contracting officer reviewed this additional information, consisting of a preliminary, nonbinding real estate and financing proposal to Deval from the Philadelphia Industrial Development Corporation (PIDC), and determined on March 4 that it was not sufficient to warrant changing his nonresponsibility determination. Nonetheless, on March 5, the contracting officer referred the nonresponsibility determination to SBA a second time for review based on this additional information. After the contracting officer sent his second referral to the SBA, Deval telefaxed to the contracting officer additional financial information, consisting of a "letter of intent" from PGI Global Marketing "pledging" \$5,600,000 to Deval and a letter from Commerce Bank indicating that it was "prepared to review and support a line of credit request to Deval for working capital" if award was made to Deval under the RFP. This information was also provided to the SBA.

By letter dated March 19, the SBA again declined to issue a COC. The SBA stated that Deval had "submitted no evidence of committed, verifiable financing necessary to function the contract." As the basis for not issuing a COC, the SBA cited the following: (1) no evidence that the private financing company (PGI) had resources available from which it could provide funds; (2) Deval's bank provided no firm financing commitment; and (3) Deval's arrangements and/or negotiations with PIDC and Information Network Systems, Inc. (INS) were indefinite and incomplete, notwithstanding that Deval's financial position may not have been substantially enhanced by them even if such arrangements were finalized.

On April 18, after SBA's second COC denial, the agency made the determination to reject Deval's low offer and make award to the other offeror, Marvin Engineering Company, Inc. By letter dated April 17, Deval advised the contracting officer that three of its officers had obtained personal home equity lines of credit from Core States Bank totaling \$215,000. The contracting officer concluded that this additional information was not sufficient to change his nonresponsibility determination and thereafter made award to Marvin. This protest followed.

Deval maintains that the Core States Bank commitment received by the principals of Deval should have changed the nonresponsibility determination.

Under the Small Business Act, 15 U.S.C. § 637 (b)(7) (1994), SBA has conclusive authority to review a contracting officer's negative determination of responsibility and to determine a small business firm's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7)(A); R.T. Nelson Painting Serv., Inc., 69 Comp. Gen. 279 (1990), 90-1 CPD ¶ 202. Where new information probative of a small business concern's responsibility comes to light for the first time prior to contract award, as here, the contracting officer may reconsider a nonresponsibility determination even though SBA may have already declined to issue a COC. Id. In cases where new information is submitted, it should be evaluated for its effect on the procuring agency's initial nonresponsibility determination; our review is limited to determining whether the reassessment was reasonable. Id. The contracting officer is not required to speculate as to what impact the new information might have on SBA officials, id., and need not refer his determination back to SBA for further consideration. Marlow Servs., Inc., 68 Comp. Gen. 390 (1989), 89-1 CPD ¶ 388.

Here, we think the agency's reassessment of Deval's responsibility was reasonable. The contracting officer's initial determination of Deval's responsibility was based on Deval's financial condition. DCMAO's evaluation of Deval's financial condition concluded that, among other things, Deval's lack of sufficient financial resources to fund the estimated \$810,575 in working capital needed to absorb the work required by this RFP into its backlog and meet its current obligations of \$12,880,474. The additional financial information Deval submitted to the contracting officer reflected personal lines of credit obtained by Deval's officers. The contracting officer affirmed his initial nonresponsibility determination because the lines of credit amounted to only one quarter of the working capital needed and because the lines of credit were not committed exclusively to the funding of Deval. Since the contracting officer's conclusions regarding the lines of credit are factually correct,

we see nothing unreasonable with his ultimate decision that the additional information did not establish that Deval had the financial wherewithal to perform the contract and did not warrant reversal of the nonresponsibility determination.

The protest is denied.

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