

DECISION



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

FILE: B-218530.2

DATE: August 2, 1985

MATTER OF: Simpson Electric Company--Reconsideration

DIGEST:

Prior decision sustaining a protest that a nonresponsibility determination lacked a reasonable basis is affirmed where the record shows that the agency, despite having the opportunity to do so, failed to provide appropriate back-up documentation to support its position.

The Department of the Army (Army) requests reconsideration of our decision in Simpson Electric Co., B-216713, Mar. 18, 1985, 85-1 C.P.D. ¶ 318, in which we sustained Simpson's protest that it was improperly found nonresponsible and recommended corrective action. The Army contends, in essence, that it had provided adequate support for its nonresponsibility determination. We affirm our decision. However, we would not object to the Army making a current responsibility determination to ascertain whether Simpson is eligible for award.

Although the Army takes exception to a number of factual recitations in our decision, the only germane issue raised by the Army is whether its report provided adequate documented evidence of Simpson's serious delinquency rate under prior Army contracts, which was the basis for the contracting officer's nonresponsibility determination.

Contrary to the Army's allegation that details regarding Simpson's delinquency rate were provided to our Office in its report of November 28, 1984, the record discloses that the only relevant evidence contained in the Army report consists of a contractor evaluation summary which included as its only justification a one-line reference to delinquency information provided by the Defense Contract Administration Services Management Area (DCASMA), Chicago.

The information provided related to a telephone call to DCASMA that indicated Simpson had a delinquency rate of 40 percent for the current year and 55 percent on in-house contracts. We specifically included this information in our decision. However, in view of substantial documentation which Simpson submitted to show that the Army's statistics were erroneous and of conflicting statistics provided by the Army, we concluded that the Army did not have a reasonable basis for its nonresponsibility determination. We had specifically requested the Army to provide us with whatever objective evidence it had available to support its figures; the Army indicated that the record consisted only of the above-referenced contractor assessment report, based on telephone information, and did not provide any other documentation.

The Army now suggests that if we had any doubt about the accuracy of the Army report, we could have confirmed it by contacting DCASMA directly. As the Army knows, however, we decide bid protests on the written record. Aarid Van Lines, Inc.--Reconsideration, B-206080.2, Mar. 15, 1982, 82-1 C.P.D. ¶ 239. In this instance, in light of the documentation furnished by Simpson, it was incumbent on the Army to obtain and provide back-up documentation for its own position particularly in view of our specific request for additional information. This the Army did not do.

We therefore affirm our prior decision.

In its request for reconsideration, the Army has provided recently compiled specific DCASMA documentation which demonstrates that Simpson is delinquent in the performance of 58 percent of its current contracts. The award of a contract requires a responsibility determination which should be based on the most current information available to the contracting officer, obtained as close as practicable to the time of award. CFE Services, Inc.; Department of the Navy--Request for Reconsideration, B-212077.3; B-212077.4, Oct. 24, 1984, 84-2 C.P.D. ¶ 459; Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 C.P.D. ¶ 403. Accordingly, we would not object if the Army considers this information and makes a current responsibility determination based on available information to determine whether Simpson is eligible for a contract award as we previously recommended.

Milton J. Fowler
for Comptroller General
of the United States