

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

Anchor Construction Corporation)	
)	CAB No. P-0737
Under Solicitation No. POAM-2006-B-003-AE)	

For the Protester Anchor Construction Corporation: Leonard A. White, Esq., White & Horton. For the District of Columbia Government: Howard Schwartz, Esq., Senior Assistant Attorney General, and Talia Cohen, Esq., Assistant Attorney General.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau, concurring.

OPINION DENYING MOTION FOR RECONSIDERATION

Filing ID 15481551

Anchor Construction Corporation (“Anchor”) requests that the Board reconsider its decision dated January 9, 2007, in which we sustained the District’s affirmative responsibility determination of the awardee, Consys Engineering, Inc. (“Consys”). Anchor asserts that the Board’s opinion contains an error of fact or law, namely, that the Board misapprehended Anchor’s protest as alleging bad faith on the part of the District in determining Consys responsible. In its motion for reconsideration, Anchor restates its protest grounds, namely, that the Consys proposal did not adhere to definitive responsibility criteria set forth in Section M.11.1 of the solicitation. That provision requires the prime contractor to perform at least 50 percent of the on-site work with its own work force.

The Board set forth in its opinion the rule that because a responsibility determination requires the contracting officer to exercise business judgment, and we accord the contracting officer broad discretion in this determination, the Board will not reverse an affirmative determination of responsibility unless the protester shows that the determination was made in bad faith or lacked a reasonable basis, or that the bidder failed to adhere to definitive responsibility criteria. Anchor mistakenly implies that we simply addressed the bad faith portion of the rule. A careful reading of our decision shows we addressed all three portions, starting with whether the awardee complied with the definitive responsibility criteria and whether the determination lacked a reasonable basis. We concluded that the contracting officer’s responsibility determination was adequately supported by the record. Further, we concluded that “there is no evidence in the record persuading us that the contracting officer erred in his determination” that “Consys [could] perform at least 50 percent of the onsite work with its own workforce.” Anchor presented no evidence in the protest to persuade us otherwise and its motion for reconsideration fails to point to any evidence in the record supporting its assertion. After addressing these first two portions of the rule, we then noted that there was no evidence

of bad faith to support overturning the District's affirmative responsibility determination of Consys.

Anchor has not shown that the Board committed an error of fact or law in its opinion. Accordingly, we deny Anchor's motion for reconsideration.

SO ORDERED.

DATED: July 6, 2007

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge