

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

FILE: B-186438

DATE: August 17, 1976

MATTER OF: Greenwood's Transfer and Storage Co., Inc.

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W98674 - 98674**DIGEST:**

Determination by contracting officer that low bidder was nonresponsible for lack of integrity based on facts in the pending debarment action for violations of Service Contract Act was justified. In making determination, contracting officer was fulfilling requirements of FPR and not imposing additional penalty on bidder.

Invitation for bids (IFB) No. 3FZT-63 was issued by the General Services Administration (GSA) for hourly moving services for the Headquarters, U. S. Air Force. At bid opening Greenwood's Transfer & Storage Co., Inc. (Greenwood's), was found to be low bidder. However, the contracting officer noted Department of Labor Case No. SCA-321-326 in which Greenwood's was found to have had numerous violations of 41 U.S.C. 351 (the Service Contract Act), in failing to pay the minimum wage and fringe benefits totaling \$21,800 involving six Government contracts. Based on the facts of this pending debarment action, the contracting officer determined that Greenwood's was not a responsible prospective contractor and notified it by letter dated April 20, 1976, that its bid was rejected. Effective June 1, 1976, Greenwood's was debarred from bidding on Government contracts.

Greenwood's has protested the contracting officer's determination on the basis that the pending debarment action did not require a finding of nonresponsibility. It argues that the determination of nonresponsibility increased the penalty beyond that three-year debarment provided in the statute.

Before a low bid may be accepted, the contracting officer must make an affirmative determination as to the responsibility of the prospective contractor. Federal Procurement Regulations (FPR) § 1-1.1204-1 (1964 ed. amend. 95). A satisfactory record of integrity is a requirement which a prospective contractor must meet under FPR § 1-203.1(d).

Our Office has consistently held that the question as to whether evidence of a bidder's lack of integrity is sufficient to warrant

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a finding in a particular case that a bidder is not responsible is a matter primarily for determination by the administrative officers concerned, and such determination will not be questioned by us in the absence of a clear showing of the lack of a reasonable basis therefor. See Colonial Baking Company, B-185305, July 20, 1976, 76-2 CPD ____, and cases cited therein. Our Office has found no basis upon which to object to the contracting officer's determination of nonresponsibility because the then-pending debarment action could properly be considered in determining whether Greenwood's was a responsible bidder. See B-175845, March 9, 1973.

On two previous solicitations, GSA had determined Greenwood's nonresponsible based on the facts in the same then-pending debarment action. Greenwood's contends that these successive determinations were contrary to our position as stated in 43 Comp. Gen. 140 (1963) and B-175845, supra, that continued refusal to award contracts to a bidder based upon the same alleged labor violations without invoking and following the applicable debarment procedures would be of doubtful validity. However, the instant case is distinguishable in that debarment proceedings had been instituted and Greenwood's therefore was given a chance to defend itself against the charges.

In addition, we do not view the contracting officer's decision not to award to the low bidder because it lacks a satisfactory record of integrity as a penalty. Rather, the decision was in fulfillment of the requirement of FPR § 1-1.1202(d) which states that if the information available to the contracting officer does not indicate clearly that the prospective contractor is responsible a determination of nonresponsibility shall be made.

Accordingly, the protest is denied.

Deputy Comptroller General
of the United States