

DOCUMENT RESUME

03296 - [A2293428]

[Protest to Determination of Lack of Financial Responsibility].
B-189025. August 15, 1977. 3 pp.

Decision re: SA Industries, Inc.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Army: Army Medical
Materiel Agency, Fort Detrick, MD.
Authority: A.S.P.R. 1-705.4(c). A.S.P.R. 1-902. A.S.P.R.
1-903.1(1). 51 Comp. Gen. 233. 53 Comp. Gen. 344.

A protester asserted that the contracting officer acted improperly in rejecting his bid on the basis of a preaward finding that he was not financially responsible. The determination of nonresponsibility was upheld because bidder was shown to be technically insolvent and his line of credit was fully extended, but the award does not have to be withheld interminably to permit bidder to cure the cause of nonresponsibility determination. (HTW)

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K. Baker
Proc II



DECISION

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

FILE: B-189025

DATE: August 15, 1977

MATTER OF: SA Industries, Inc.

DIGEST:

Contracting officer's determination that apparent low bidder was not responsible due to unsatisfactory financial capacity is upheld because financial analysis, based on current balance sheet submitted by bidder, showed that bidder was technically insolvent and because bidder's line of credit was fully extended. Contract award need not be withheld interminably to permit bidder to cure the cause of a nonresponsibility determination.

SA Industries, Inc. (SA) protests the award of a contract to George W. Smyth, Jr. (Smyth) under invitation for bids (IFB) No. DAMD 25-77-B-0003, issued by the United States Army Medical Materiel Agency. The IFB invited bids for lawn maintenance at Fort Detrick, Maryland.

SA was the lowest evaluated bidder for one group of items under the IFB. The procuring activity had not done business with the protester and a pre-award survey was requested through the Defense Contract Administration Services (DCAS) office, Baltimore, Maryland. Based on the pre-award survey, the contracting officer found that the protester was not financially responsible for award. Since the contemplated award was less than \$10,000, the contracting officer was not required to forward it to the appropriate SBA field office for consideration as to the possible issuance of a Certificate of Competency. See Armed Services Procurement Regulation (ASPR) § 1-705.4(c) (1976 ed.). Award was made to the next low bidder, Smyth, on March 18, 1977, following a favorable

B-189025

pre-award survey of that bidder. Thereafter, SA protested to our Office the rejection of its bid. SA asserts that the contracting officer acted improperly in rejecting its bid on the basis of the DCAS financial analyst's report.

The financial analyst's report, upon which the contracting officer's decision was based, indicates that financial reports were requested from SA in January 1977. SA submitted to the financial analyst a balance sheet and profit and loss statement which showed a deficit working capital position and a deficit tangible net worth. The report also contains a record that the Suburban Trust Company stated to the financial analyst that the firm's line of credit was fully extended and that the bank would not make any additional loans to SA. The report concluded that SA had failed to provide evidence of sufficient funds with which to perform the proposed contract.

The protester asserts that on March 21, 1977, it repaid \$1,500.00 on its line of credit at Suburban Trust Company so as to assure its ability to obtain further financing. However, the agency states that SA provided notification on February 28, 1977, of its intention to pay on "about 10 March 1977" at least \$1,500 on its line of credit. When the agency checked with the bank on March 14, 1977, SA had not yet made a payment against its line of credit. The agency also points out that SA did not make the promised payment to the bank until March 21, 1977, the day upon which bids for the contract were to expire, and eleven days after SA had promised the agency it would make a repayment. By that time the contract had been awarded to the next low bidder.

The protester also asserts that financial resources were unnecessary for the performance of the instant procurement. It states that the only two items required to perform the subject mowing contract are equipment and labor. The protester states that since it had the equipment and was paying its labor forces, financing was unnecessary. The agency, however, believes that adequate financing is necessary to assure payroll payments and to pay for equipment maintenance and supplies.

B-189025

ASPR § 1-902 requires that contracts be awarded only to responsible contractors. A prospective contractor must demonstrate affirmatively its responsibility, including that it has adequate financial resources, or the ability to obtain such resources as required during performance of the contract. ASPR § 1-903.1(i). The determination of a prospective contractor's responsibility, including financial capacity, is a matter left primarily to the contracting officer and will not be questioned by our Office unless it is shown by clear and convincing evidence that the finding of nonresponsibility was unreasonable or not based upon substantial evidence. 51 Comp. Gen. 233; 53 Comp. Gen. 344 (1973).

In the present case, the contracting officer determined that financing was necessary to satisfy payroll payments and possible repair needs. In our opinion, this is not an unreasonable position. The contracting officer then determined that SA lacked the ability to obtain financial resources due to its deficit tangible net worth and due to its fully-extended line of credit with the Suburban Trust Company and its failure to make repayment as indicated. A contract award need not be withheld interminably to cure the cause of a nonresponsibility determination. On the basis of these findings, this Office finds no basis upon which to object to the contracting officer's determination of nonresponsibility.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States