

DECISION



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

*CMB-01056*

*10,818*

FILE: B-194434

DATE: July 20, 1979

MATTER OF: Cacciamani Bros.

DIGEST: *[Protest Alleging Awardee Is Not Qualified Bidder]*

1. Protest against award of contract alleging that principal of firm is retired employee of procuring activity and prohibited by statute from seeking contracts at this time with agency and that firm lacks capability to perform contract is dismissed. Issues raised by protest are for review and resolution by Department of Justice, procuring activity and Department of Labor, respectively, not GAO.
2. Protester's allegations of irregularities in agency's award and administration of 1977 contracts are untimely protests against contracts awarded and concern matters of contract administration not for resolution under GAO Bid Protest Procedures, 4 C.F.R. part 20 (1978).
3. Protester's request for information to substantiate protest should be pursued under Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976); GAO has no authority under FOIA to determine what information procuring activity must disclose.

Cacciamani Bros. (Cacciamani) has protested against the award of contract No. N62472-79-D-4556 by the Department of the Navy, Naval Facilities Engineering Command (Navy), to Alvin Scheinfeldt (Scheinfeldt) for crane maintenance service at the Philadelphia Naval Shipyard. *JD*

The Navy's requirements were initially solicited under invitation for bids (IFB) No. N62472-78-B-4597 (IFB-4597), which was canceled after bid opening because the Navy determined that the IFB specifications were not clear as to the work requirements. Defense Acquisition Regulation (DAR) § 2-404.1(b)(i) (1976 ed.). The requirements were resolicited under IFB No. N62472-79-B-4556 (IFB-4556). Three bids were received at the bid

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opening on February 20, 1979; Scheinfeldt was the low bidder and Cacciamani, the second low bidder. After a preaward evaluation, award was made to Scheinfeldt on March 2, 1979.

Cacciamani contends that because Mr. Scheinfeldt retired from the Navy in 1978, he was prohibited from seeking contractual work with the Navy for a period of 2 years after his retirement and bid on the aforementioned solicitations in violation of the controlling procurement regulations. The protester further asserts that Scheinfeldt lacks adequate staff, experience and equipment to perform the contract, in violation of the requirements of the Walsh-Healey Public Contracts Act, 41 U.S.C. § 35 (1976).

We must decline to consider Scheinfeldt's eligibility under the Walsh-Healey Act. The responsibility for determining whether a bidder is qualified as a regular dealer or manufacturer rests initially with the contracting officer and is subject to review by the Secretary of Labor, not by the General Accounting Office. See, e.g., Corbin Sales Corp., B-181454, October 29, 1975, 75-2 CPD 261; F & H Manufacturing Corp., B-183491, April 29, 1975, 75-1 CPD 266.

To the extent the protester questions Scheinfeldt's capability to perform the work, the protest raises the issue of the bidder's responsibility. In this connection, the award to Scheinfeldt imports an affirmative determination of the firm's responsibility. DAR § 1-902 (1976 ed.); Advertising Distributors of Washington, Inc., B-187070, February 15, 1977, 77-1 CPD 111. Our Office does not review affirmative responsibility determinations, absent a showing of fraud, or when the solicitation contains definitive responsibility criteria which allegedly have not been met. Randall Manufacturing Company, Inc. (Reconsideration), B-185363, January 26, 1976, 76-1 CPD 44; see Central Metal Products, 54 Comp. Gen. 66, 67 (1974), 74-2 CPD 64. Because Cacciamani's protest does not involve either of the conditions requisite to our review of the Navy's affirmative determination of responsibility, we will not consider this ground of the protest on the merits.

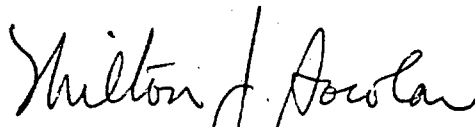
We believe that in questioning the propriety of Mr. Scheinfeldt's status as a bidder/contractor, the protester refers rather to the prohibition contained in 18 U.S.C. § 281 (1976), which is a criminal statute. The enforcement of criminal statutes and investigation of alleged criminal violations are the prerogative of the Department of Justice, to which such allegations should be referred. Local F76, International Association of Firefighters, B-194084, March 28, 1979, 79-1 CPD 209.

The protester cites as evidence of irregularities in the crane maintenance procurements the Navy's actions concerning contracts awarded to Cacciamani and other firms in 1977. Insofar as the protester takes exception to contracts previously awarded to its competitors, protests against those awards at this time are clearly untimely filed and not for consideration on the merits. 4 C.F.R. § 20.2 (1978). Cacciamani's objections to the amount and type of purchase orders placed under these contracts and the performance or default of other contractors constitute matters of contract administration which are not for resolution under our Bid Protest Procedures. See, e.g., D.C. Electronics, B-184266, March 8, 1976, 76-1 CPD 160; Harding Pollution Controls Corporation, B-182899, February 6, 1976, 76-1 CPD 77. We will, however, retain this information for possible consideration in connection with our audit functions.

We note that in commenting upon the report the Navy submitted in response to the protest, 4 C.F.R. § 20.3 (1978), Cacciamani requested information in support of its position. The burden is on the protester, not GAO, to obtain the information necessary to substantiate its case; such requests should be pursued through the disclosure remedy available to the protester under the Freedom of Information Act, 5 U.S.C. § 552 (1976). Our Office has no authority under the act to determine what information other Government agencies must disclose, Dynatrend, Inc., B-192038, January 3, 1979, 79-1 CPD 4; Augmentation Incorporated, B-185137, March 16, 1976, 76-1 CPD 179, and Cacciamani's remedy was to appeal to the Secretary of the Navy or to a court of competent jurisdiction. 5 U.S.C. § 552(a)(4) (1976).

In view of the fact that the protest raises issues which are not reviewable by this Office, the protester's request for a conference on the merits of the protest pursuant to 4 C.F.R. § 20.7(a) (1978) is denied because it would serve no useful purpose.

The protest is dismissed.

A handwritten signature in cursive script that reads "Milton J. Socolar". The signature is written in dark ink and is positioned above the typed name and title.

Milton J. Socolar  
General Counsel