

DECISION



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

PLII

12489

FILE: B-197192

DATE: January 10, 1980

MATTER OF: W. M. Grace, Inc.

DIGEST:

1. A contractor may not be deliberately excluded from competition on the basis of a poor performance record because such exclusion would be an improper premature determination of non-responsibility.
2. Negotiations are not permitted in an advertised procurement.

ABC 1

W. M. Grace, Inc. protests the award of a contract to Kirsh Maintenance under solicitation NJ62470-80-B-2767, issued by the Department of the Navy for completion of a contract for janitorial services. The Navy had terminated the previous contract for default.

Protest Involving

Grace contends that Kirsh is affiliated with the defaulted contractor and therefore should not have been permitted to compete in the reprocurement. Grace also contends that the second low bidder also should have been barred from the competition because it had an "unfavorable track record" with the Navy.

Where a protester's initial submission indicates that the protest is without legal merit, we will decide the matter on the basis of the protester's submission without obtaining a report from the procuring agency. Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91.

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The Navy could not deliberately exclude either bidder (or even the defaulted contractor) from the competition based on their performance on previous

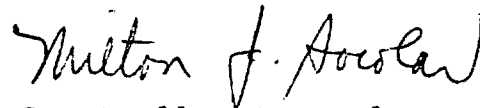
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contracts because this would constitute an improper premature responsibility determination. Such determinations may not be made in advance of the receipt of a bid. PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213.

Regarding the award to Kirsh, we will not review an agency's affirmative determination of responsibility absent circumstances not alleged to be present here. Consolidated Elevator Company, B-190929, March 3, 1978, 78-1 CPD 166.

Grace also argues that the Navy should have conducted negotiations before awarding the contract, as required by the solicitation. The Navy has informed us, however, that this was an advertised procurement. Therefore, negotiations were not permitted.

The protest is summarily denied.



For the Comptroller General  
of the United States