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**DECISION**

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

FILE: B-196429

DATE: January 31, 1980

MATTER OF: Peoples Medi-Car, Inc. 3789

**DIGEST:**

1. Where small business bidder has been found not responsible, matter is for determination by Small Business Administration (SBA) under Certificate of Competency procedures, and GAO will not review such SBA determinations absent prima facie showing that such action was taken fraudulently or with such willful disregard of the facts as to imply bad faith.
2. GAO will not consider issues raised in bid protests where same issues are before court of competent jurisdiction except where Court expresses an interest in receiving GAO decision.

Peoples Medi-Car (Peoples) protests the award of a contract to James Medi-Car, Inc. (James), for wheelchair car service under solicitation No. 535-8-80 issued by the Veterans Administration (VA) Lakeside Medical Center in Chicago, Illinois. Peoples was low bidder on this solicitation, a 100 percent small business set-aside. Peoples questions the determination by the VA, on the basis of a finding by an inspection team, that Peoples was not a qualified bidder and could not perform the contract adequately. Alleging that James, the awardee, is not a minority firm, protester asserts that as a "black" minority business, it is entitled to preference on this solicitation, and that the VA's rejection of its bid was "solely because of race."

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[ALLEGATION THAT AWARD IS Not Qualified]

Except for the allegations relating to protester's minority status, the matters complained of relate to the bidder's responsibility, i.e., its ability to perform the contract. Dumont Oscilloscope Laboratories, Inc., B-195113, October 24, 1979, 79-2 CPD 286; Carsonville Metal Products, Co., B-195991, September 25, 1979, 79-2 CPD 224. Where, as here, an agency finds a small business bidder not to be a responsible prospective contractor the matter must be referred to the Small Business Administration (SBA) under SBA'S Certificate of Competency procedures. We understand this has now been done and that SBA is considering the matter. The Small Business Act, 15 U.S.C. 637(b)(7) (1976), as amended by Act of August 4, 1977, Pub. L. No. 95-89, § 501, confers authority on the SBA to conclusively determine all areas of responsibility with respect to a small business bidder, and the General Accounting Office (GAO) will not review SBA determinations of responsibility absent a prima facie showing that such action was taken fraudulently or with such willful disregard of the facts as to imply bad faith. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. SBA's actions are not in controversy here.

In any event, we note that the issues in this case are currently before the United States District Court for the Northern District of Illinois, Eastern Division in Civil Action No. 79 C 4502. As a general rule, GAO will not consider issues raised in a bid protest where the same issues are before a court of competent jurisdiction, J. Baranello and Sons, supra, unless the Court expects, requests, or otherwise expresses an interest in receiving a GAO decision. Dumont Oscilloscope Laboratories, Inc., B-192982, February 2, 1979, 79-1 CPD 79. Since the Court has not indicated an interest in our views, we will not take any further action on this matter.

The protest is dismissed.

  
Milton J. Socolar  
General Counsel