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DECISION



20856
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205732.2

DATE: February 19, 1982

MATTER OF: Chipman Van & Storage, Inc. -- Reconsideration

DIGEST:

Decision dismissing protest of bid's responsiveness filed two months after initial adverse agency action is affirmed where protester states it delayed protesting to this Office pending the Small Business Administration's determination of the bidder's responsibility since SEA's involvement in the procurement was irrelevant to the responsiveness question.

Chipman Van & Storage, Inc. requests reconsideration of our decision B-205732, December 30, 1981, 81-2 CPD 515, dismissing as untimely its protest of the proposed contract award to Able Moving and Storage under Naval Supply Center invitation for bids No. (IFB) N00228-81-B-8345. We affirm our prior decision.

Chipman's protest contended that the proposed awardee's bid should be deemed nonresponsive because it did not state a "Bidder's Guaranteed Daily Capability" which equaled or exceeded the Navy's minimum acceptable capacity listed in the IFB. We dismissed the protest as untimely because Chipman filed its protest with this Office more than three months after initially protesting the matter to the Navy and almost two months after the Navy sent the protester a letter denying the initial protest.

Chipman based its assertion of nonresponsiveness both in its protest to this Office and in its initial protest to the Navy on a clause of the solicitation which states that:

"Bidders must complete the 'Bidder's Guaranteed Daily Capability', * * * for all items within an area of performance for which they submit bids. Failure to do so will render the bid nonresponsive." (Emphasis in original.)

Able did not properly complete the clause. The contracting officer's denial of Chipman's protest on this issue found that notwithstanding the language of the solicitation, these omissions in Able's bid were not a matter of responsiveness, but responsibility which could be resolved after bid opening. Clearly then, as of the date Chipman received the denial of the protest, it knew that the contracting officer considered Able's bid to be responsive.

For the purpose of reconsideration, Chipman explains why it delayed filing a protest with this Office as follows:

"[The contracting officer] stated that we could do anything we wanted after his denial of October 9, 1981, however, his office was going to recommend that award not be made to Able. He further stated that because this was a Small Business set-aside, he must submit all information to the [Small Business Administration] office for their review. Because of this, we waited until SBA acted. When we were advised that SBA was going to overrule the Contracting Officer's decision, we at that time, filed the protest with G.A.O."

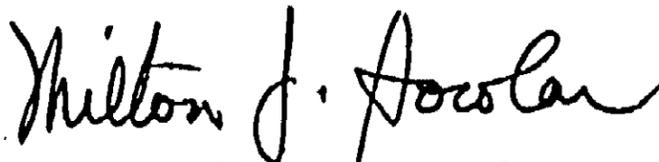
We do not believe these facts render Chipman's initial protest concerning the responsiveness of Able's bid timely.

The responsiveness of a bid is not subject to determination by the SBA. The SBA has statutory authority to determine all elements of responsibility of a small business concern, 15 U.S.C. § 637(b)(7)(Supp. III 1979), and if a contracting officer determines a small business concern to be nonresponsive, he must refer the matter to SBA under its Certificate of Competency (COC) procedures. Defense Acquisition Regulation (DAR) § 1-705.4(c) (1976 ed.). Under no circumstances, however, may a contracting officer refer a case to SBA before he or she determines that the offer is responsive. DAR § 1-705.4(c)(i).

Since the regulation fairly apprises all bidders that a responsiveness determination must be made prior to referring a responsibility matter to SBA, and because Chipman knew the contracting officer's position on the issue of Able's responsiveness, SBA's involvement in the procurement was irrelevant to the responsiveness question.

To the extent Chipman intended to question Able's responsibility, we note that the SBA issued Able a COC, thereby certifying to that firm's responsibility. Since the SBA has statutory authority to conclusively determine a small business concern's responsibility, our review is limited to cases involving fraud or bad faith, which is not the case here. Technical Food Services, Inc., B-203742.2, September 15, 1981, 81-2 CPD 219.

The decision is affirmed.

for 
Comptroller General
of the United States