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**DECISION**



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

**FILE: B-206859**

**DATE: June 21, 1982**

**MATTER OF: Ellsworth Street Associates**

**DIGEST:**

Protest by disappointed offeror that contract awardee's price is too low and that minimum wage requirement of Service Contract Act will be violated is dismissed because below-cost quotation does not present basis to challenge award and enforcement of Service Contract Act rests with Labor Department. Further, GAO does not review contracting agency's affirmative determination of responsibility except in circumstances not applicable here.

Ellsworth Street Associates (ESA) protests an award by the United States Army Corps of Engineers (Army) of a contract negotiated pursuant to request for quotations (RFQ) No. DACW69-82-Q-0066 for park attendant services during the summer months of 1982 at Cane Patch Campground in Pound Lake, Virginia.

ESA, who submitted a quotation of \$14,750, contends that the awardee's quotation of \$10,995 is inadequate to perform the contract and comply with the Service Contract Act of 1965, 41 U.S.C. § 351 (1976), and that the Army has given a competitive advantage to the awardee. Because we find ESA's contentions to be without merit or not for our consideration, the protest is denied in part and dismissed in part.

Regarding the contention that the awardee will not be able to perform the contract at its quoted price, this involves a matter of the awardee's responsibility. Before award, an agency must affirmatively determine that the awardee is responsible. Defense Acquisition Regulation § 1-904.1 (1976 ed.). We have held that where a contracting agency makes

an affirmative determination of responsibility, as here, we will not review it absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been met. J&R Cleaning and General Maintenance, B-206280, February 19, 1982, 82-1 CPD 147. Neither exception applies here. Further, even if the awardee's quotation is below cost, we have held that the submission of a below-cost quotation is not a valid basis upon which to challenge an award. Forte, Inc., B-203041, May 19, 1981, 81-1 CPD 388, and J&R Cleaning and General Maintenance, supra.

ESA next asserts that the Army's acceptance of the awardee's quotation will violate the minimum wage requirement of the Service Contract Act. In response to this same argument, we stated in Forte, Inc., supra, that the responsibility for administration and enforcement of the Service Contract Act is vested in the Department of Labor, not with GAO, and whether contract requirements are met is a matter of contract administration which is the function of the contracting agency. See also Blast-It-All, Inc., B-207381, May 19, 1982, 82-1 CPD 481, and National Office Moving Company, Keahey Moving and Storage, B-203304, B-203304.2, January 4, 1982, 82-1 CPD 4 (where awardee's bid allegedly violated the Service Contract Act minimum wage requirement).

ESA's last contention is that the Army should not have considered "family-type" offerors since they have a competitive advantage in that the individual family members may not have to receive the minimum wage due to their relationship. The RFQ did not address this matter and if one offeror has an advantage due to its status as a "family-type" firm, as opposed to a commercial firm, the Army is not required to equalize this area. See, for example, Fire & Technical Equipment Corp., B-203858, September 29, 1981, 81-2 CPD 266. This basis of protest is denied.

For the foregoing reasons, the ESA protest is dismissed in part and denied in part.

*Milton J. Auer*  
for Comptroller General  
of the United States