

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

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FILE: B-211829

DATE: September 20, 1983

MATTER OF: Columbus Jack Corporation

DIGEST:

1. Army contracting officer's failure to refer determination of nonresponsibility of small business to SBA, because bidder's quotation was less than \$10,000, although consistent with Defense Acquisition Regulation § 1-705.4(c), was contrary to SBA regulation § 125.5(d) when total cost of Government procurement, determined by awardee's quotation or bid price, exceeded \$10,000.
2. Contracting officer's nonresponsibility determination did not lack any reasonable basis when it was based on negative report of contractor's quality assurance history.

Columbus Jack Corporation (Columbus), a small business, protests the rejection of its quotation under request for quotation (RFQ) No. DAAEO7-83-Q-U363 issued by United States Army Tank-Automotive Command, Warren, Michigan (Army). The contracting officer determined that Columbus, the low quoter with a price of \$9,455, was nonresponsible because of an unsatisfactory quality assurance record. Award was made to Majestic Metal, Inc. (Majestic), at a price of \$22,235. Columbus disputes the determination that it is nonresponsible.

While we deny the protest, we find the matter should have been referred to the Small Business Administration (SBA).

Since the procurement was conducted under the small purchase procedures set forth in Defense Acquisition Regulation (DAR) § 3-600, et seq. (1976 ed.), the Army did not refer the question of the responsibility of Columbus to SBA. In support of its action, the Army cites DAR § 1-705.4(c), which states that referrals to SBA shall not be made where the acquisition is made pursuant to small purchase procedures.

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In Amco Tool & Die Co., 62 Comp. Gen. 213, 83-1 CPD 246, we found that the contracting officer need not refer the question of the responsibility of a small business to SBA where small purchase procedures are used. In a footnote, we stated that while the failure of the contracting agency to refer was consistent with DAR § 1-705.4(c), the agency, in the absence of SBA agreement, may not itself decide to avoid the referral requirement, citing Z.A.N. Co., 59 Comp. Gen. 637 (1980), 80-2 CPD 494; J. L. Butler, 59 Comp. Gen. 144 (1979), 79-2 CPD 412; and The Forestry Account, B-193089, January 30, 1979, 79-1 CPD 68. We then stated:

"The protester has not objected to the contracting officer's failure to refer the matter to SBA, however. Moreover, subsequent to the award made in this case, the SBA provided by regulation that 'it is within the discretion of the contracting officer to determine if a referral should be made when the contract value is less than \$10,000.' [13 C.F.R. § 125.5(d)]. Under these circumstances, we will not object to the failure to refer."

Amco Tool & Die Co., supra. See also Amity Precision Spring Co., Inc., B-210949.2, July 27, 1983, 83-2 CPD 133. Consequently, under Amco, the question of referral is whether the contract value is less than \$10,000 and not whether the procurement is made under small purchase procedures. SBA regulations do not define the term "contract value" and correspondence with SBA has not provided a clear and consistent definition. Neither Amity nor Amco addressed the question since the price quotations of the protesters and awardees in those cases were less than \$10,000; whereas, in the instant case, the protester's quotation is less than \$10,000 and the awardee's quotation exceeds \$10,000.

We believe the term "contract value" refers to what the procurement will cost the Government. Since the value of a contract cannot be determined in the absence of an award or proposed award, the protester's quotation or bid price is not an appropriate standard from which to make the determination. A quotation or bid price constitutes no more than an offer by the protester to enter into a contract with the Government, a circumstance which may or may not occur. We find the value of a contract is established once the Government identifies the awardee, since it is the awardee's quotation or bid price which represents the cost of a Government procurement.

The contract value of the instant procurement is \$22,235, since this was the quotation of Majestic, the awardee, and the failure to refer the question of the responsibility of Columbus to SBA was not consistent with SBA regulation § 125.5(d). However, we believe this decision should apply prospectively since the meaning of the term "contract value" in the SBA regulation had not previously been defined.

Since there was no review of the nonresponsibility determination by SBA in this case, the matter is appropriate for our Office to review. Indian Made Products Company, B-186980, November 17, 1976, 76-2 CPD 427, and Amco, supra.

Columbus was found nonresponsible based on a finding that the firm had an unsatisfactory quality assurance history. The Defense Contract Administration Service (DCAS), Dayton, Ohio, furnished the contracting officer with a negative recommendation for award based on the number of Quality Deficiency Reports issued in the past 2 years and the shipment of nonconforming material under prior contracts. Even with the above information, the Industrial Specialist recommended award to Columbus based on its performance of a current contract. The contracting officer weighed both recommendations and, in addition, considered his personal knowledge of Columbus being late with beginning deliveries under another contract and found the bidder nonresponsible.

Columbus contends that the statements regarding its quality assurance history are the result of longstanding difficulties it has had with DCAS, Dayton, and personal conflicts with its resident quality assurance representative (QAR). Columbus states that the delay in beginning deliveries under the other contract was because the QAR would not accept material it had on hand to begin the contract and the contract was completed before the delivery schedule required. Columbus also states that these reports from DCAS have not been a bar to an award in the past because SBA has issued the firm a certificate of competency.

The determination of a prospective contractor's responsibility is the duty of the contracting officer. In making the determination, he is vested with a wide degree of discretion and business judgment. Generally, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination. S.A.F.E Export Corporation, B-208744, April 22, 1983, 83-1 CPD 437.

Here, the contracting officer's determination cannot be said to have lacked any reasonable basis since it was based on the information before him. While Columbus questions the reason behind the DCAS report, the fact remains that the contracting officer had this information and weighed it against the award recommendation by the Industrial Specialist and, therefore, used the discretion which is accorded him in making the determination.

The protest is denied.

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