

DECISION

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

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FILE: B-211831**DATE:** March 6, 1984**MATTER OF:** International Alliance of Sports Officials**DIGEST:**

1. Where protester's allegation that procuring agency intends to award a contract to a bidder that is substantially owned or controlled by government employees is not supported by evidence in the record, protester has failed to meet its burden of proof to show that award to that firm would be contrary to regulatory provision which generally precludes entering into contracts with firms substantially owned or controlled by government employees.
2. Protester's contention that potential awardee's bid is "nonresponsive" because that firm allegedly does not have the insurance coverage required by the solicitation is without merit because the bid does not limit, reduce or modify the bidder's obligation under the terms of the solicitation. Rather, whether a bidder has obtained the insurance coverage required by a solicitation relates to that firm's responsibility and GAO does not review affirmative determinations of responsibility, except in circumstances not present here.
3. Whether bidder in line for award may have engaged in collusive bidding is one circumstance to be considered by the contracting officer in determining whether that bidder is a responsible prospective contractor.

International Alliance of Sports Officials (IASO) protests the award of a contract to anyone other than itself under invitation for bids (IFB) No. DAKF57-83-B-0091 issued by the Department of the Army for sports officiating services at Ft. Lewis, Washington. IASO contends that (1)

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the three apparent low bidders are substantially controlled by active duty military personnel and Department of Defense civilian employees and an award to any of those firms would violate public policy; (2) the amounts of the bids submitted by these bidders would cover direct labor costs only and therefore the bids are nonresponsive in that this indicates that these firms do not have the insurance coverage required by the solicitation; and (3) the submission of identical bids on a majority of the line items suggests that these bidders acted in concert in preparing their bids. We deny the protest on the first two grounds and dismiss it on the last one.

The following five bids were received in response to the IFB:

<u>Bidder</u>	<u>Bid</u>
First Lakewood Athletic Officials Association (Lakewood)	\$43,590.00
Recreation Pro Services Inc. (Recreation)	43,786.00
Sports Officiating Services (SOS)	44,390.00
IASO	62,734.21
Scientific Security Systems Corp.	99,669.00

After bid opening, the contracting officer requested that Lakewood provide her with information describing its legal structure and identifying the employment of its members. She also requested that Recreation and SOS provide information describing their legal structure. Based on the information received, the contracting officer determined that Lakewood and SOS are substantially owned or controlled by government employees and consequently rejected their bids in accordance with Defense Acquisition Regulation (DAR) § 1-302.6, which provides that no agency knowingly shall enter into a contract with employees of the government or a business organization that is substantially owned or controlled by government employees except for the most compelling reason, such as where the needs of the government cannot reasonably be otherwise supplied. Thus, Recreation became the apparent low bidder and the Army intends to conduct a preaward evaluation of that firm.

IASO's first ground of protest in effect was sustained as to Lakewood and SOS when the Army rejected the bids of those firms for being substantially owned or controlled by government employees. As to whether Recreation is substantially controlled by government

employees, it is well-established that the protester has the burden of proving its case. National Service Corporation, B-205629, July 26, 1982, 82-2 CPD 76. IASO, however, merely asserts that Recreation's membership is comprised of active duty military personnel and Department of Defense civilians and that these members control the firm. It does not present any information to support this allegation. In contrast, the Army has presented information indicating that Recreation is a for profit organization incorporated under the laws of the State of Washington and is owned and operated by three individuals, none of whom are government employees. Since the record does not include any evidence to support IASO's contention that Recreation is substantially owned or controlled by government employees, this allegation must be rejected. International Alliance of Sports Officials, B-211755, January 25, 1984, 84-1 CPD ____.

IASO next alleges that Recreation's bid is nonresponsive because the firm's bid price suggests that it has not taken into account the cost of the necessary insurance coverage. The test of responsiveness is whether a bid contains an unequivocal offer to provide the requested items in total conformance with the material terms of the solicitation. Buckeye Pacific Corporation, B-212183, August 30, 1983, 83-2 CPD 282. Since nothing on the face of Recreation's bid limits, reduces or modifies its obligation under the IFB, its bid is responsive. See Todd Shipyards Corporation, B-195110, October 24, 1979, 79-2 CPD 285.

Rather, whether Recreation has obtained the insurance coverage required by the solicitation concerns the firm's ability to perform the contract in accordance with its terms. Thus, this is a matter of the firm's responsibility which must be determined in the affirmative by the contracting officer prior to award. Phoenix Marine Corporation, B-196040, October 23, 1979, 79-2 CPD 283. Our Office does not review protests against affirmative determinations of responsibility, unless either possible fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Harnischfeger Corporation, B-211313, July 8, 1983, 83-2 CPD 68. Neither of the exceptions applies in this case. Thus, the sufficiency of Recreation's insurance coverage is not for our review. We note that Recreation has submitted a Certificate of Insurance indicating compliance with the solicitation requirements

for general liability insurance and that the Army states that other applicable insurance certificates will be required during the preaward evaluation of the firm.

Finally, IASO alleges that "there is a possible violation of the DAR in that collusion in bidding is indicated" by the fact that the 3 low bidders submitted identical prices for 20 of the 39 line items in the solicitation. Whether a bidding pattern indicates collusive bidding is a matter for determination of the contracting officer who, if he perceives the existence of collusion, is expected to report the situation to the Attorney General. DAR § 1-111.2. With respect to the award of a contract, whether the bidder in line for award may have engaged in collusive bidding is to be considered in the contracting officer's determination of the bidder's responsibility. See KDH Corporation and Richard W. Bates, Joint Venture, B-209207, December 14, 1982, 82-2 CPD 532. We understand that the contracting officer has not yet made his determination of Recreation's responsibility, but in any event, as pointed out above, our review of affirmative determinations of responsibility is limited.

The protest is denied in part and dismissed in part.

for Milton J. Aorolan
Comptroller General
of the United States