

**DECISION**

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

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FILE: B-215215

DATE: September 25, 1984

MATTER OF: A-1 Pure Ice Company

**DIGEST:**

1. Protest against the contracting agency's decision to permit the low bidder to obtain sanitary approval of its facility after bid opening, even though the solicitation required such approval before that date, is denied, since the requirement concerns bidder responsibility which, regardless of the wording of the solicitation provision, must be measured as of the time of contract award.
2. Certificate of Competency issued by the Small Business Administration is conclusive on the contracting agency as to a bidder's responsibility to perform a particular contract.
3. Protest based upon allegation that the protester was given false information by a competitor pertains to a dispute between private parties and is not for consideration by GAO under its bid protest function.
4. A protester has the burden of proving its case, and GAO does not conduct investigations for the purpose of establishing the validity of a protester's assertions.

A-1 Pure Ice Company protests any contract award to Valley Ice Corporation under invitation for bids (IFB) No. DABT10-84-B-0046 issued by the Department of the Army to procure manufactured ice. Pure Ice, the incumbent contractor, contends that Valley Ice, the low bidder, was not an approved source for ice prior to bid opening, as required by the IFB. We deny the protest.

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The IFB provided that the ice must be "pure, sanitary and suitable for drinking purposes" and that bids would not be accepted unless the ice would be produced by a firm approved by a government agency prior to bid opening with respect to sanitary conditions. The IFB also provided that the ice would be inspected upon delivery to insure compliance with the terms of the contract.

Shortly before bid opening, Valley Ice failed an inspection. The Army therefore determined that Valley Ice was nonresponsible and referred the matter to the Small Business Administration (SBA) for processing under its certificate of competency (COC) procedures. Valley Ice was reinspected 1 month later with an SBA representative present, and passed. As a result, the SBA issued the firm a COC, and the Army intends to award Valley Ice a contract.

The issue in this protest is whether the sanitary approval requirement involves a matter of bidder responsibility, or as the protester contends, of bid responsiveness. Responsibility concerns the bidder's capability, in terms of matters such as facilities and finances, to perform as promised in the bid. If the sanitary approval requirement is a matter of responsibility, the SBA's issuance of a COC under the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), is conclusive upon the Army in that respect, since a COC covers all aspects of a firm's responsibility. Caesar Construction, Inc., B-213795, Dec. 15, 1983, 83-2 CPD ¶ 694. Responsiveness, on the other hand, focuses on the promise itself and the item in issue, that is, it concerns whether the bidder, in the bid, unequivocally has offered to provide items (or services) that conform to the invitation's material terms. See E.S. Edwards & Son, Inc.; Koch Corp., B-212304; B-212304.3, June 18, 1984, 84-1 CPD ¶ 631.

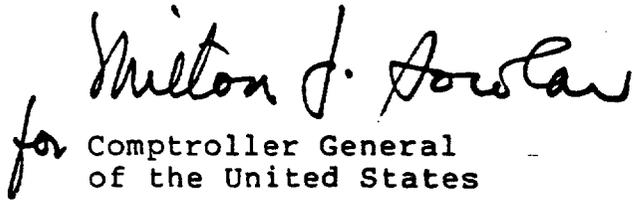
We agree with the Army that the sanitary approval provision involves bidder responsibility. The provision relates to the bidder's facility and its capacity to manufacture the ice to the required standards of purity, which are traditional responsibility matters. See, e.g., Propper Mfg. Co., Inc., B-208035, Mar. 22, 1983, 83-1 CPD ¶ 279; Courier-Citizen Co., B-192899, May 9, 1979, 79-1 CPD ¶ 323. The nature of such a requirement is not changed merely because the solicitation requires the

bidder's facilities to be licensed or otherwise inspected and approved. See U.S. Jet Aviation, B-214093, May 25, 1984, 84-1 CPD ¶ 575. Moreover, the fact that Valley Ice was not in actual compliance with the solicitation's terms until more than 1 month after bid opening, which ultimately led to the issuance of the COC, is irrelevant to the legality of the award. Responsibility is measured as of the time of contract award, so that a bidder who becomes responsible after bid opening can be eligible for award regardless of a solicitation requirement that compliance be as of bid opening. See TECOM Incorporated, B-211899, June 27, 1983, 83-2 CPD 28; West Electronics, Inc., B-190173, Feb. 10, 1978, 78-1 CPD ¶ 118; Advertising Distributors of Washington, Inc., B-187070, Feb. 15, 1977, 77-1 CPD ¶ 111. Therefore, we find the award to Valley Ice was proper.

Pure Ice further contends that this procurement was tainted by bad faith because it had been informed by Valley Ice that Valley Ice would not be able to bid for this requirement because of the sanitary approval provision in the IFB, and that Pure Ice had relied on this misrepresentation when submitting its bid. However, even if we assume that Pure Ice was deliberately misled by Valley Ice as to its intentions to bid or not bid, the dispute is between two private parties and is not one for consideration by our Office under its bid protest function. See Ted R. Brown & Associates, Inc., B-201724, Feb. 23, 1981, 81-1 CPD ¶ 127.

Finally, Pure Ice requests that any ruling by our Office require an investigation of this procurement to determine whether "a conspiracy or other wrongdoing existed." It is well established, however, that it is the protester who has the burden of proving its case. Rogar Mfg. Corp., B-214110, Apr. 25, 1984, 84-1 CPD ¶ 479. Our Office will not conduct investigations for the purpose of establishing the validity of a protester's assertions. Pluribus Products, Inc., B-214924, May 23, 1984, 84-1 CPD ¶ 562.

The protest is denied.

  
for Comptroller General  
of the United States