

**DECISION**

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

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**FILE:** B-215827**DATE:** December 5, 1984**MATTER OF:** Costec Associates**DIGEST:**

GAO finds reasonable basis for contracting officer's nonresponsibility determination where protester is a newly formed business, with no prior performance record and minimal working capital.

Costec Associates (Costec) protests the award of a contract by the General Services Administration (GSA), Office of Federal Supply and Services, to Olympia USA, Inc., for supplying manual portable typewriters for a Federal Supply Schedule contract under invitation for bids (IFB) No. FGE-D2-75284-A. Costec submitted the lowest bid, but was determined to be nonresponsible. We deny the protest.

The contracting officer determined that Costec was nonresponsible based on unsatisfactory plant facilities and financial responsibility reports. The plant facilities report found Costec incapable of performing the contract because the machine it offered (Dong Ah model 910 TR) did not meet all of the salient characteristics of the IFB's commercial item description. Costec's typewriter (a foreign manufactured item) did not have a carriage release on the left side or tab clear or tab set functions as required by the description. The report also found that Costec had no past performance record, an unknown production capacity, and no formal quality control system. The financial responsibility report found that Costec had insufficient working capital (\$32,500) to maintain a \$230,000 contract because it is a new business with an unproven profitability.

Costec essentially disagrees with the conclusions of the two reports. Costec advises that the typewriter does offer tab settings in the back of the machine. Although

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admitting it does not have a carriage release on the left side, Costec argues that the repeat key performs the same function. As to its financial responsibility, Costec believes that the agreement with the manufacturer was based on payment terms easily achievable without incurring a large debt. Costec contends that it was not provided the opportunity to meet the requirements of the IFB--given that the next lowest bidder was \$30 per unit higher.

Notwithstanding that a bidder may submit the lowest bid, the bidder is not eligible for award until the contracting officer affirmatively determines that the bidder is responsible. See Federal Procurement Regulations, 41 C.F.R. § 1-1.1204-1(a) (1984). The responsibility of the bidder refers to a prospective contractor's ability to perform a particular contract. In this connection, the contracting officer looks at whether the contractor: (1) has adequate financial resources, (2) is able to meet the delivery or performance schedule, (3) has a satisfactory record of performance on other contracts, (4) has a satisfactory record of integrity, (5) is otherwise qualified under other laws and regulations, (6) has the necessary organization and skill, and (7) has the necessary facilities.

We have held that a procuring agency has broad discretion in making responsibility determinations, which must of necessity be a matter of judgment. Such judgment should be based on fact and reached in good faith. However, it is only proper that the decision be left to the administrative discretion of the agency involved because it must bear the major brunt of any difficulties experienced in obtaining required performance. Therefore, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis. See Community Economic Development Corporation, B-211170, Aug. 23, 1983, 83-2 C.P.D. ¶ 235.

We cannot find that the contracting officer's determination was without a reasonable basis. The fact that Costec is a new business, with no prior record of performance and minimal working capital, in our view, is a sufficient basis for the contracting officer's nonresponsibility determination and we will not question it. Therefore, it is unnecessary to decide whether Costec's offered product complied with the salient characteristics in the solicitation.

The protest is denied.

*for*   
Comptroller General  
of the United States