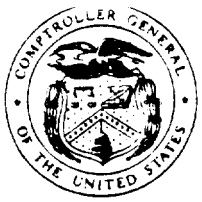
DECISION



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

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FILE: B-218035 DATE: February 13, 1985

MATTER OF: A&C Building and Industrial Maintenance Corporation

DIGEST:

Protest alleging that low bidder is nonresponsive for failure to execute affirmative action and equal employment opportunity certifications is dismissed, since compliance with these programs concerns the bidder's responsibility and GAO generally will not review a contracting officer's affirmative determination. Moreover, agency may waive failure to execute the certifications as a minor informality or irregularity under FAR § 14.405(f).

A&C Building and Industrial Maintenance Corporation protests the award of any contract under invitation for bids (IFB) No. GS-11C-50011, issued by the General Services Administration for custodial services in the Forrestal Building, Washington, D.C. A&C, the apparent third-low bidder, contends that the two lower bidders submitted nonresponsive bids. We dismiss the protest.

A&C alleges that the low bidder, Dutch Boy's Maintenance Company, does not meet the equal employment opportunity (EEO) and affirmative action requirements of the IFB, and that the second-low bidder, Supreme Services Inc., failed to acknowledge an amendment.

The IFB contains the standard clauses set forth in the Federal Acquisiton Regulation (FAR), 48 C.F.R. §§ 52.222-22 and 52.222-25 (1984). These clauses require a bidder to represent that (1) it either has or has not participated in contracts subject to EEO and affirmative action requirements and (2) that it has or has not submitted compliance reports and/or developed and filed an affirmative action plan. The protester argues that GSA's statement, in the IFB, that the apparent low bidder would be subject to a

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pre-award compliance review shows that these clauses are material and are related to bid responsiveness.

We have consistently held that a bidder's compliance with EEO and affirmative action requirements is a matter of the bidder's responsibility, rather than of bid responsiveness. See Borinquen Bus Service, Inc. B-190395, Apr. 17, 1978, 78-1 CPD ¶ 292; Royal Industries, B-185571, Mar. 1, 1976, 76-1 CPD ¶ 139. Further, the standard clauses are for informational purposes and do not purport to bind the bidder to any course of action or other obligation upon acceptance of the bid. Id.

Here, before an award may be made to Dutch Boy's, the contracting officer must determine that the firm is responsible. We will not review an affirmative determination of responsibility absent a showing of possible fraud on the part of the contracting officer or that definitive responsibility criteria have not been met. See Xtek, Inc., B-213166, Mar. 5, 1984, 84-1 CPD ¶ 264. Neither has been alleged or shown here.

Moreover, GSA may waive the low bidder's failure to execute the certifications with respect to EEO and affirmative action as a minor informality or irregularity. See FAR, 48 C.F.R. § 14.405(f), in which the clauses in question are specifically listed as examples of defects that may be waived. Therefore, on the basis of the information contained in the protest, we find no reason to question the responsiveness of the low bid.

In view of this conclusion, the question of the responsiveness of Supreme Services, Inc.'s bid is academic, since that firm is not in line for award.

We dismiss the protest.

for Seymour Efros
Comptroller General
of the United States