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

FILE: B-218404.2, B-218474 **DATE:** June 10, 1985

MATTER OF: Richard Sanchez Associates

DIGEST:

Agency decision to terminate negotiations with small business offeror under solicitation for architect-engineer services need not be referred to Small Business Administration under certificate of competency procedures since agency decision is based on evaluation of offeror's qualifications relative to other offerors as prescribed by Brooks Act, 40 U.S.C. §§ 541-544, not a negative responsibility determination.

Richard Sanchez Associates protests the decision by the Corps of Engineers to terminate negotiations with the firm under two solicitations, request for proposals (RFP) No. DACA63-84-R-0107, for engineering design work for dormitory renovation at Bergstrom Air Force Base, Texas, and RFP No. DACA63-84-R-0022, under which the agency would award three indefinite delivery contracts for multidiscipline design work at various military installations in Texas and Louisiana. Both solicitations were issued under the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which prescribes procedures for acquiring architect-engineer (A-E) services. The protester, a small business, contends that the termination of negotiations with it constituted a negative responsibility determination which should have been referred to the Small Business Administration (SBA) for a certificate of competency (COC) determination under 15 U.S.C. § 637(b)(7)(A) (1982). We deny the protests.

Under the procedures for acquiring A-E services set out in 40 U.S.C. §§ 541-544, the contracting agency first must publicly announce its requirements. An evaluation board set up by the agency then evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the specific project. Discussions then must be held with "no less than three firms regarding anticipated concepts and

the relative utility of alternative methods of approach" for providing the services requested. The board then prepares a report for the selection official, ranking in order of preference no fewer than the three firms considered most qualified. The selection official makes the final choice of the three most qualified firms and negotiations are conducted with the highest ranking firm. If the contracting officer is unable to reach agreement with that firm on a fair and equitable price, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee.

RFP No. DACA63-84-R-0107 was announced in the Commerce Business Daily (CBD) on October 9, 1984. On December 27, the protester was informed that it was selected as the most qualified firm for the project. The agency's evaluation was based on information in the standard forms (SF) 254 and 255[1]/ submitted by the protester regarding the experience and size of the firm and its capacity to accomplish the work in the specified time. A predesign conference was held on January 24, 1985, and the protester submitted its proposal on February 15.

On February 18, the agency project manager received information from another branch in the agency indicating that the protester did not have seven employees as shown on the SF 255 submitted in response to the RFP. In a telephone conversation with the project manager on February 21, the protester confirmed that his firm had three technical employees, himself, a draftsman and a junior architect. During a visit to the protester's office on February 22, the agency's field project manager noted that there were only two technical employees present, the protester and a draftsman, and that the protester had stated that he planned to hire two more architects to work on the agency's project at Bergstrom Air Force Base.

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[1]/ SF 254 is the statement of qualifications submitted annually by firms wishing to be considered for A-E contracts. Among other things, it requires each firm to indicate its total number of employees by discipline. SF 255, a supplement to SF 254, lists a firm's additional qualifications with respect to the specific project. It requires the firm to list by discipline the number of personnel presently employed.

Based on this information, the agency decided that the SF 255 did not accurately reflect the current composition of the protester's firm. In view of the actual personnel capacity of the firm, the agency determined that the protester was not the most qualified offeror and terminated negotiations with the firm.

The second solicitation, RFP No. -0022, was announced in the CBD on November 16, 1984. The agency determined that the protester was one of the three highest ranking offerors and, by letter dated December 31, notified the protester that he would receive one of the three indefinite delivery contracts to be awarded under the RFP.

The SF 255 submitted by the protester on November 23 indicated a total of 13 employees in the firm. During a visit to the firm on January 11, 1985, however, the project manager found a total of only three technical personnel--the protester, a draftsman, and a junior architect. Based on the actual personnel capacity of the firm, the agency decided that the protester was not among the three most qualified firms for the project and terminated negotiations with the firm.

The Brooks Act specifically provides for termination of negotiations with the most qualified firm if the contracting agency and the firm are unable to reach an agreement on price. See 40 U.S.C. § 544(b). Here, in comparison, the agency discussed during negotiations that its original assessment of the protester's qualifications was based on inaccurate informtion. It then decided that negotiations with the protester were no longer appropriate. The protester maintains that the agency's decision to terminate negotiations under both RFPs constituted a determination that the protester was not a responsible offeror; since the firm is a small business, the protester argues, the agency was required to forward its determination to the SBA for a final decision on the protester's responsibility under the COC procedures. We disagree.

There is no indication in the statute which prescribes the procedures for acquiring A-E services or its legislative history that the ranking of small business firms competing for an A-E procurement was intended to be referred to the SBA. See 40 U.S.C. §§ 541-544; S. Rep. No. 1219, 92nd Cong., 2d Sess. (1972). To the contrary, under the statutory scheme it is the contracting agency which is authorized to compare the relative merits of the

participating A-E firms in the context of the particular services required by the agency. Further, unlike a responsibility determination, which concerns whether a bidder has the minimum capability to perform as required, the agency's evaluation in an A-E procurement focuses on each offeror's capability and qualifications relative to the other offerors. In an analogous context, we have held that it is appropriate in negotiated procurements to use responsibility-related factors in making relative assessments of the merits of competing proposals; if a small business is found deficient in such situations, COC procedures do not apply. Electrospace Systems, Inc., 58 Comp. Gen. 415, 425 (1979), 79-1 CPD ¶ 264; Anderson Engineering and Testing Co., B-208632, Jan. 31, 1983, 83-1 CPD ¶ 99.

We conclude that the agency was not required to submit its decision to terminate negotiations with the protester to the SBA for a responsibility determination.

The protests are denied.

Harry R. Van Cleve
General Counsel