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Ken Schick  
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**DECISION**



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

**FILE:** B-220710

**DATE:** October 18, 1985

**MATTER OF:** Rothe Development, Inc.

**DIGEST:**

1. Protest of contracting agency's affirmative determination of responsibility is dismissed since GAO does not review such determinations unless possible fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied.
2. Responsibility for administration and enforcement of the Service Contract Act is vested in the Department of Labor, not GAO.
3. Whether the awardee fulfills its contractual obligations is a matter for the contracting agency in the administration of the contract.

Rothe Development, Inc. protests the award of a contract for oil analyses to Brazos TV and Record Center under Army request for proposals No. DAKF48-85-R-0070. Rothe contends that Brazos has improperly performed similar contracts in the past and will also perform this contract inadequately. For example, Rothe alleges that Brazos has not complied with the wage provisions of the Service Contract Act, as amended, 41 U.S.C. §§ 351-356 (1982), and that Brazos has only one evaluator on its staff although proper performance under this and prior contracts requires at least two evaluators. Finally, Rothe contends that Brazos submitted a below-cost offer under the solicitation.

We dismiss the protest.

The protester's argument that Brazos' alleged poor past performance indicates that the firm will fail to meet the requirements under the current award relates to Brazos' responsibility. Transiac Corp., B-210168, May 23, 1983, 83-1 CPD ¶ 554. The award of a federal contract necessarily includes a finding that the awardee is responsible.

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Sylvan Service Corp., B-219077, June 17, 1985, 85-1 CPD ¶ 694. Our Office does not review a contracting agency's affirmative determination of responsibility unless either possible fraud is shown on the part of the procuring agency or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985); Weaver Shipyard & Drydock, Inc., B-210652, Feb. 9, 1983, 83-1 CPD ¶ 146. Neither exception is present here.

Whether Brazos complies with the Service Contract Act wage provisions during contract performance is a matter for the Department of Labor and not our Office, since the Department of Labor is responsible for the administration and enforcement of the act. Central Texas College, B-218279 et al., Mar. 13, 1985, 85-1 CPD ¶ 310.

Also, the alleged submission of a below cost offer is not itself a basis to challenge the validity of a contract award. Weaver Shipyard & Drydock, Inc., B-210652, supra. Whether an offeror can perform at its price is one of the matters considered by the contracting officer in determining responsibility. As indicated above, we will not review that determination.

Finally, whether the awardee fulfills its obligations under the contract is not for our review, but involves a matter for the contracting agency in the administration of the contract. 4 C.F.R. § 21.3(f)(1); Biological Monitoring, Inc., B-209431, Apr. 13, 1983, 83-1 CPD ¶ 395. Thus, to the extent Rothe is arguing that Brazos will not fulfill its contractual obligations, we will not consider the matter. It is the Army's responsibility to insure that the contract is properly performed.

The protest is dismissed.



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General Counsel