

DECISION



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

FILE: B-220406

DATE: November 4, 1985

MATTER OF: Dismas House of Kentucky, Inc.

DIGEST:

1. GAO will not review a challenge to a contracting agency's affirmative responsibility determination where there is no allegation or showing that the contracting officials acted fraudulently or in bad faith or that the solicitation contained definitive responsibility criteria that have not been met.
2. Protester's disagreement with the contracting agency's evaluation of the relative merits of the protester's and the awardee's proposals is not a basis on which to challenge award of the contract where the protester does not contend that the agency improperly applied the evaluation criteria in the solicitation or otherwise violated applicable procurement laws or regulations.

Dismas House of Kentucky, Inc. protests the award of a contract to Bannum Enterprises under request for proposals (RFP) No. 274-046-5, issued by the Bureau of Prisons for residential care for federal offenders in a community residential treatment center. We dismiss the protest.

The protester first contends that Bannum is not capable of satisfactorily providing the services called for by the RFP because Bannum has not obtained the necessary local zoning permit for the residential treatment center. According to the protester, Bannum will not be able to secure the permit due to community opposition and because the deed to the property which Bannum proposes to use prohibits its use for the type of facility contemplated. The protester also maintains that Bannum has a history of unsatisfactory performance and lacks business integrity.

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By questioning the awardee's ability to perform under the contract, the protester is challenging the contracting agency's affirmative determination that the awardee is a responsible offeror. Because such a determination is based in large part on the contracting officer's subjective judgment, our Office will not consider a protest challenging such an affirmative responsibility determination unless there is a showing either that the determination may have been made fraudulently or in bad faith by contracting officials, or that definitive responsibility criteria have not been met. William A. Stiles, Jr., et al., B-215922, et al., Dec. 12, 1984, 84-2 CPD ¶ 658; Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985). Here, the protester does not contend, and we can see no evidence, that either exception applies.

The protester also contends that its performance under the contract would be superior in various respects to the awardee's performance. Specifically, the protester argues that the award to Bannum is not in the federal offenders' best interest because Bannum is not accredited by the American Correctional Association and lacks community support. The protester's mere disagreement with the contracting agency over the relative merits of the two proposals is not a basis on which to challenge the award of the contract, however; to prevail, the protester must show that the agency improperly applied the evaluation criteria in the RFP or that the award otherwise was improper under the applicable procurement laws and regulations. Since the protester does not contend that the RFP requires offerors to be accredited or to demonstrate community support, and presents no other evidence that the agency improperly evaluated the proposals, this ground of its protest presents no basis on which to disturb the award of the contract to Bannum.

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel