

Ms Evans



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Murdaugh Construction Co. Inc.

File: B-245133

Date: August 14, 1991

James C. Spivey for the protester.
Catherine M. Evans, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest alleging that two low bidders are ineligible for award of contract for electrical work under small disadvantaged business set-aside because they are general contractors and not licensed electrical contractors is dismissed, since it concerns a matter of bidder responsibility; General Accounting Office will not review a contracting agency's affirmative responsibility determination absent a showing of fraud or bad faith or that definitive responsibility criteria in the solicitation were not met.

DECISION

Murdaugh Construction Co. Inc. protests the award of a contract to either of the two low bidders under invitation for bids (IFB) No. F08650-91-B-A088, issued by the Department of the Air Force.

We dismiss the protest.

The IFB was set aside for small disadvantaged business (SDB) concerns. Murdaugh alleges that the two low bidders, while SDB concerns, are general contractors rather than licensed electrical contractors, and that they plan to subcontract the work to non-SDB concerns. Murdaugh argues that the intent of the SDB program is to encourage SDB concerns to submit bids within their own areas of expertise, and that award to a general contractor for electrical work therefore is improper.

Murdaugh's argument is without merit. To be eligible for award under an SDB set-aside, a responsive bidder need only be determined responsible to perform the contract, and qualify as a small disadvantaged business on the date of submission of its offer and the date of award. Federal Acquisition Regulation (FAR) § 14.407-2; Department of Defense FAR Supplement § 219.301-70(a). Here, the Air Force informs us

that the low bidder has been determined responsible. Our Office will not review such an affirmative responsibility determination absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)(5)); ALM, Inc., B-225679.3, May 8, 1987, 87-1 CPD ¶ 493. Neither exception applies here.

Concerning Murdaugh's allegation that the low bidder intends to contract out all of the work to non-SDB concerns, the IFB contained the clause at FAR § 52.219-14, Limitations on Subcontracting, which provides in pertinent part that the contractor agrees to perform at least 15 percent of the cost of a general construction contract, or 25 percent of the cost of construction by special trade contractors, with its own employees. By signing its bid, the low bidder agreed to comply with this provision. Whether the bidder is able to perform the contract in accordance with the terms of the IFB is a matter of responsibility which, as stated above, we will not review absent circumstances not present here. ALM, Inc., B-225679.3, supra. Further, whether the contractor in fact complies with the subcontracting provision during performance is a matter of contract administration which is the primary responsibility of the agency and not for consideration by our Office. Bid Protest Regulations, § 21.3(m)(1) (to be codified at 4 C.F.R. § 21.3(m)(1)).

The protest is dismissed.


John M. Melody
Assistant General Counsel