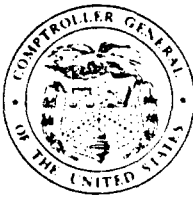


# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

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FILE: B-184463

DATE: June 15, 1976

MATTER OF: The Pulse Companies, Inc.

### DIGEST:

1. Bidder's isolated failure, on prior contract, to pay employees wages required by Service Contract Act and to pay withholding and social security taxes for its employees is not sufficient reason to support determination by contracting officer that bidder was not responsible because of lack of business integrity since there is no evidence of recent wage underpayments, restitution has been made, and withholding income and social security taxes have been paid.
2. Deficiencies reported in inspection report concerning bidder's equipment, facilities and personnel relate to bidder's capacity and, thus, cannot be used to support a determination of non-responsibility based on reasons other than lack of capacity and credit.

By letter of February 4, 1976, The Pulse Companies, Inc. (Pulse) (previously called Pulse Ambulance Service), protested the rejection of its bid submitted in response to invitation for bids (IFB) 671-3-76, issued by the Chief, Supply Service, Audie L. Murphy Memorial Veterans Hospital, San Antonio, Texas, for the furnishing of ambulance service for the period July 1975 through September 30, 1976.

This is the second time that Pulse's bid has been rejected in connection with IFB 671-3-76, as well as the second protest lodged in connection with the invitation. The first rejection was for reasons which went to the capacity of Pulse to perform. Since the firm is small business, we advised the Veterans Administration (VA) that the question of Pulse's responsibility should be submitted to the Small Business Administration (SBA) for the possible issuance of a certificate of competency (COC) as required by section 1-1.708 (1964 ed. amend. 71) of the Federal Procurement Regulations (FPR). Pulse Ambulance Service; Don's Ambulance Service, Inc., B-184463, November 4, 1975, 75-2 CPD 278. We also advised the VA that if the contracting officer had reason to believe that Pulse lacked business

integrity because of its alleged failure to pay its workers proper wages and to withhold income and social security taxes the COC procedures would not have to be followed.

Subsequent to our decision of November 4, 1975, Pulse's bid was again rejected, this time for reasons other than lack of capacity and credit, i.e., lack of tenacity and perseverance and lack of business integrity. If a small business concern is found not responsible for reasons other than lack of capacity or credit, the COC procedures need not be followed. However, the views of SBA on the matter must be obtained and considered. In the present case the SBA disagreed with the contracting officer's determination and subsequently filed an appeal with VA, but the VA sustained the contracting officer's position.

FPR § 1-1.708-2(a)(5) requires a determination that a small business concern is not responsible for reasons other than capacity or credit to be "supported by substantial evidence documented in the contract file." Recognizing that questions of responsibility are matters primarily for determination by the procurement agencies, we have upheld nonresponsibility determinations for reasons other than capacity or credit when the evidence of record reasonably provided a basis for such determinations. Kennedy Van & Storage Company, Inc., B-180973, June 19, 1974, 74-1 CPD 334; 51 Comp. Gen. 288 (1971); 49 id 139 (1969). However, determinations based on an alleged lack of tenacity, perseverance or integrity have not been upheld when the evidence did not relate to those factors or did not adequately establish a basis for a determination of nonresponsibility. 49 Comp. Gen. 600 (1970).

A careful review of the record indicates that the VA's determination that Pulse was nonresponsible for reasons other than lack of capacity and credit was based on four factors. One of these factors was Pulse's inability to adequately satisfy basic requirements outlined in VA's inspection report. In our decision of November 4, 1975, we held that the deficiencies noted in VA's inspection report concerning equipment, facilities and personnel are covered by COC procedures and cannot support a determination of nonresponsibility based on reasons other than lack of capacity or credit. See 49 Comp. Gen. supra, at 604.

Another factor upon which VA based its determination was Pulse's violation of the wage requirements under the Service Contract Act, 41 U.S.C. § 351, et seq. (1970), and the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327, et seq. (1970), during the performance of the 1974-75 "Taxi" contract with the Audie L. Murphy Veterans Hospital. The evidence of record establishes that in an isolated instance Pulse did violate at least the Service Contract Act; however, restitution has been made to the underpaid workers and there is nothing to indicate that there has been any recent violation. Consequently, we are unable to conclude that these violations established that Pulse was not a responsible bidder because of lack of integrity. See International Brotherhood of Teamsters (Local 814), B-181068, August 13, 1974, 74-2 CPD 93; B-161867, August 16, 1967.

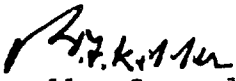
Regarding Pulse's isolated failure to withhold income and social security taxes for its employees, the record indicates Pulse has paid these taxes. We are therefore unable to conclude that Pulse's failure to pay these taxes reflects adversely on its business integrity.

Finally, VA documents several instances where Pulse was late or actually did not pick up patients as required by its "Taxi" contract. While we recognize the potential seriousness of these deficiencies, we are unable, based on the present record, to conclude that these deficiencies establish a lack of tenacity and perseverance. First of all, we note that all of these deficiencies occurred in the latter part of 1974 and the first part of 1975. There are no cited instances of such deficiencies on the current "Taxi" contract. This lends credence to Pulse's and SBA's position that these deficiencies amount to nothing more than minor isolated complaints which can normally be expected on a service contract and that Pulse has taken the necessary steps to prevent recurrence of these deficiencies.

On the basis of the present record we must conclude that the evidence was insufficient to support a determination that Pulse is not a responsible bidder because of lack of tenacity and perseverance, or lack of integrity. Accordingly, the protest by Pulse is sustained. Ordinarily, under these circumstances we would again recommend that VA, pursuant to FPR § 1-1.708, et seq., supra, submit the matter to SBA for the possible issuance of a

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COC. However, since we are advised that the contract will be completed on September 30, 1976, no meaningful relief can be granted in the instant case.

  
Acting Comptroller General  
of the United States