



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E.M.S. Consultants, Inc.

File: B-270498

Date: December 1, 1995

DECISION

E.M.S. Consultants, Inc. protests the award of a contract to ISA of Louisville, Kentucky by the Department of Veterans Affairs under invitation for bids No. 688-24-96. E.M.S. contends that "ISA should not be considered because ISA did not demonstrate that it is a responsible bidder."

We dismiss the protest because a protester's challenge to the awardee's ability to perform the contract is generally not reviewed by our Office.

A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. Bid Protest Regulations, Section 21.5(c), 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.5(c)); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Where, as here, there is no showing of possible fraud or bad faith, or that the definitive responsibility criteria have been misapplied, we have no basis to review the protest.

E.M.S. contends that the award to ISA was racially motivated because the contracting officer referred to E.M.S. as "too lily white." E.M.S. however does not argue that it was in fact the low bidder or that it was otherwise in line for award. Thus, the allegation of racial bias does not set forth a valid basis for protest. A protester must set forth sufficient information to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge-Request for Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. Accordingly, the protest is dismissed.

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