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DECISION



Mr. Crowley PL-11
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194932

DATE: December 18, 1979

MATTER OF: J. L. Butler

DIGEST:

Contracting officer's determination that low small business quoter was not responsible without referral to SBA under COC procedures was improper as contracting officer is required by regulation to refer all matters of responsibility to SBA and no exception exists in Federal Procurement Regulations where procurement is made under small purchase procedures for contracts up to \$10,000. 2

J. L. Butler (Butler) ^{DL603684} protests the award of a contract to James M. Mahoney (Mahoney) for trail maintenance and clearing awarded by the Stanislaus ^{DL603685} National Forest, United States Forest Service (Forest Service) under request for quotations (RFQ) R5-16-79-26. ³⁵⁰⁵

Butler alleges that his quotation was lower priced than Mahoney's, that he has the financial ability and experience to perform the work required, that he has successfully completed other contracts for the contracting agency in the past, and that he is intimately familiar with the work to be done and the area involved. Butler requests that the contract to Mahoney be terminated and award made to him. We sustain the protest because the Forest Service should not have rejected Butler, a small business concern, without referring the question of Butler's responsibility to the Small Business Administration (SBA) under the Certificate of Competency (COC) procedures.

The RFQ required each quoter to complete a "Qualification Questionnaire" which requested information concerning prior work experience, present work commitments

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and other outstanding bids, personnel and equipment, and whether the work area covered by the RFO had been examined. Butler completed the questionnaire, indicating in part that the work area had not been examined.

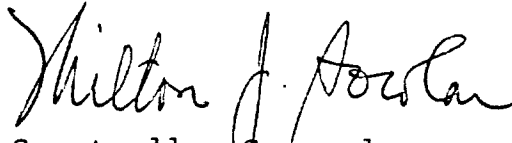
In its report to this Office the Forest Service states that the basic reason the low quotation of Butler was not selected for award was that Butler's questionnaire showed that he had not visited the work site and gave no indication of prior experience in the type of work required. In addition, the contracting officer also considered the Forest Service's "strained relationship" with the two sons of Butler on other contracts. The contracting officer believed Butler was acting for one of his sons in submitting his quotation. It appears that this perceived relationship between Butler and one of his sons, while denied by Butler, did in fact have a bearing upon the decision of the contracting officer to reject Butler.

This case does not appear to involve a question regarding the contracting officer's judgment of the advantages and disadvantages of the proposed performance as related to price in which case the contracting officer is permitted broad discretion. See Tagg Associates, B-191677, July 27, 1978, 78-2 CPD 76. In our opinion, the record clearly establishes that the contracting officer rejected Butler because he believed Butler did not have the capability and capacity to accomplish the promised work in a timely manner and thus was not responsible.

Under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. I, 1977), no small business concern may be precluded from award because of non-responsibility, including but not limited to, a lack of capability, competency, capacity, credit, integrity, perseverance and tenacity, without referral of the matter to the SBA for a final disposition regardless of the amount of the procurement. The Forestry Account, B-193089, January 30, 1979, 79-1 CPD 68. The SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of

responsibility. See Com-Data, Inc., B-191289, June 23, 1978, 78-1 CPD 459. In this case the agency procured its requirements under the small purchase procedures for procurements not exceeding \$10,000. Federal Procurement Regulations (FPR) 1-3.6 (1964 ed. amend. 153). While the FPR provisions which implement the above provisions of the Small Business Act, speak in terms of "bids" and "proposals," we believe the COC procedures are equally applicable to awards made pursuant to quotations under small purchase RFQs. FPR 1-1.708-2 (1964 ed. amend. 192). The FPR does not exempt small purchases from the COC procedures otherwise required.

The protest is sustained; however, we cannot recommend relief as we have been advised by the Forest Service that performance under the reprocurement contract is nearly complete and no useful purpose would be served in referring the matter of Butler's responsibility to the SBA for possible issuance of a COC. We are, nevertheless, bringing this matter to the attention of the Secretary of Agriculture by letter of today recommending that appropriate action be taken to preclude a recurrence of this error.



For The Comptroller General
of the United States