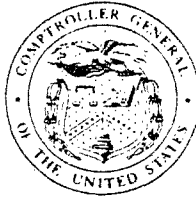


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DECISION



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

FILE: B-201095

DATE: November 18, 1980

MATTER OF: Utah Geophysical Inc. DLG 05506

DIGEST:

[Protest alleging agency failed to refer nonresponsibility determination to Small Business Administration is summarily denied since protester's submission indicates agency did not determine protester's responsibility but rather evaluated and found wanting protester's proposal. Matters which are normally considered in responsibility determinations may properly be considered in evaluation of proposals when negotiation procedures are used and agency makes relative assessment of competing offerors' ability to meet contract requirements.] SBA

Utah Geophysical Inc. (UGI) protests the failure of the Nuclear Regulatory Commission to refer an alleged nonresponsibility determination to the Small Business Administration (SBA). We summarily deny the protest. ACC 0067

Whenever an agency finds a small business to be non-responsible to perform a contract, it is required by law to submit the matter to the SBA for a conclusive determination as to the responsibility of that firm. 15 U.S.C. § 637 (Supp. I 1977). However, it is clear from the protester's submission that the agency did not find UGI to be nonresponsible. Rather, the submission indicates that the procurement was negotiated and the agency found UGI's proposal to be unacceptable for a variety of reasons, including "the experience and level of effort for key personnel assigned to the project," the very limited experience of UGI, and the "too sparse" details on maintenance of the system involved.

We have long recognized that when negotiation procedures are used, matters such as experience which traditionally bear on responsibility may be considered as part of a technical evaluation, if the agency's needs require a

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relative assessment of competing offerors' abilities to perform. See, e.g., Electrospace Systems, Inc., 58 Comp. Gen. 415 (1979), 79-1 CPD 264; Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410. Here, it appears all the agency did was consider the relative merits of UGI's proposal and determine that the proposal would not be included in the competitive range. This clearly does not involve a responsibility determination and thus no referral to SBA was required.

Since it is clear from the initial submission that the protest is without merit, in accordance with our standard practice we have not requested a report from the agency. See James B. Nolan Company, Inc. -- Reconsideration, B-192482, February 9, 1979, 79-1 CPD 89.

The protest is summarily denied.

Henry R. Van Cleave
For the Comptroller General
of the United States