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DECISION



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

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FILE: B-200360

DATE: January 22, 1981

MATTER OF: Dan's Janitorial Service & Supply

DIGEST:

[Protest of Air Force Determination of Nonresponsibility]

GAO will not review determination of nonresponsibility of small business bidder absent prima facie showing of fraud or that information vital to responsibility determination was willfully disregarded, thus implying bad faith, where such determination was referred to and concurred in by Small Business Administration (SBA) since disposition of SBA with regard to such matters is final.

Dan's Janitorial Service & Supply (Dan's) protests the Department of the Air Force's (Air Force) rejection of its firm as nonresponsible under solicitation No. F08650-80-B-0129 and the denial by the Small Business Administration (SBA) of a certificate of competency (COC).

The protester objects to the grounds for denial of the COC, "financial and production resources not adequate," since Dan's submitted a letter of credit from Thomas Funding Corporation (TFC). In addition, Dan's contends that this letter was ignored. Further, Dan's states that the cost estimates used by the Air Force were too high since the solicitation only required alternate day services. Dan's advises that it was given these estimates by the contracting officer when the contracting officer questioned its bid insisting the bid was too low. Dan's requests that we investigate this matter.

In response, the Air Force states that the contracting officer's determination that Dan's was nonresponsible relative to furnishing custodial services for Patrick Air Force Base was sent to the SBA on September 4, 1980. In addition to the nonresponsibility determination, the

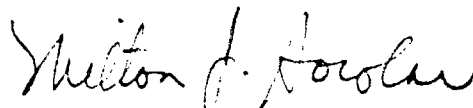
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Air Force advises that a copy of the solicitation, preaward survey, the letter of credit from TFC, and the abstract of bids were forwarded to the SBA. The Air Force, responding to Dan's objection to the estimates, submits that the solicitation, in addition to the alternate day services requirements, contained requirements for 5- and 7-day services. The Air Force contends that the SBA made an independent analysis and determination. On September 29, 1980, the SBA declined issuance of a COC. We have been advised by the Air Force that it will not make an award pending our decision.

When an agency determines that a small business bidder is nonresponsible, the law requires that the matter be referred to the SBA, which conclusively determines the bidder's responsibility by issuing or declining to issue a COC. 15 U.S.C. § 637(b)(7) (1976 and Supp. I 1977). This Office has no authority to review SBA's determination, to require issuance of a COC, or to reopen a case where a COC has been denied unless the protester has made a prima facie showing of fraud or that information vital to the responsibility determination was willfully disregarded, thus implying bad faith. KenCom, Inc., 59 Comp. Gen. _____ (1980), 80-1 CPD 294; B&W Construction Corporation, B-199877, September 30, 1980, 80-2 CPD 233. Furthermore, under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), we do not generally conduct independent investigations to establish the validity of a protester's statements. M & H Mfg. Co., Inc., B-191950, August 18, 1978, 78-2 CPD 129.

In the circumstances, the actions of both the Air Force and SBA appear to be consistent with their responsibilities. In addition, Dan's has offered no evidence to bring this case under one of the exceptions to our general rule against reviewing SBA determinations. Since Dan's was properly rejected as nonresponsible, there is no necessity in our reviewing the dispute concerning the cost estimates. Therefore, we find no basis for considering the matter further.

The protest is dismissed.


Milton J. Socolar
General Counsel