

Ms. Cooper

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DECISION

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

[Protest Alleging Proposed Awardees Are Nonresponsible]

FILE: B-198844

DATE: January 26, 1981

MATTER OF: BFH & Associates, Inc.

DIGEST:

1. Whether offeror is capable of meeting solicitation requirements involves question of offeror's responsibility, affirmative determination of which GAO does not review unless either fraud is shown on part of procuring officials or solicitation contains definitive responsibility criteria which allegedly have not been applied.
2. Protest concerning small business size status of low offeror is not subject to review by GAO since by law it is matter for decision by Small Business Administration.
3. Protester's contention that it should receive award because it has more experience than awardees is without merit where protester did not receive highest evaluation score and evaluation has not been shown to be unreasonable.

BFH & Associates, Inc. (BFH) protests the award of contracts by the Small Business Administration under solicitation No. RFP-SBA-7(j)-MSB-80-2 to any offerors other than itself.

This solicitation was a small business set-aside requesting proposals for management and technical assistance services to be provided to minority and other small businesses in various geographic areas. BFH is the incumbent contractor in Area 1 Region 1. Based on its prior experience, BFH protests awards made in Region 1, Areas 1, 2 and 3 to other contractors.

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Specially, BFH contends that the proposed awardees in Areas 1, 2 and 3 are not responsible in that they cannot meet the requirement in the specification that a contractor perform with its existing organization at least 50 percent of the total work. In addition, BFH contends that these firms lack the requisite experience to perform the contracts, and that Rosenfeld, Steinman and Blaus' low price for Area 3 is indicative of the poor quality of work which will be performed by that firm.

We have been informed by the SBA that the portion of the solicitation covering Area 3 has been canceled because the low offeror was determined to be nonresponsible and the remaining offers were not considered reasonable. Thus, that part of BFH's protest which pertains to Area 3 is moot.

With respect to the other areas, BFH's contentions relate to the offerors' responsibility as prospective contractors. This Office does not review protests of affirmative determinations of responsibility unless fraud on the part of the procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Systems Consultants, Inc., B-197872, September 18, 1980, 80-2 CPD 203. Neither exception is alleged here.

BFH also contends that Lucas, Tucker & Company, the proposed awardee in Area 2, is not a small business as required by the solicitation. Under 15 U.S.C. § 637(b) (1976), SBA is empowered to conclusively determine matters of small business size status for a Federal procurement. Alaska Associates, Inc., B-196360, February 20, 1980, 80-1 CPD 149. Accordingly, this matter is not subject to review by our Office.

Finally, BFH argues that since all the proposed awardees are less qualified than it is to perform these services, BFH should receive the awards. However, in each area BFH did not receive the highest score under the criteria (quality and capability of staff, previous experience, and price) set forth in the solicitation and BFH has not established that the evaluation was without a reasonable basis. Thus, we

see no reason to question the agency's judgment in this matter. Communications Corps Incorporated, B-195778, February 20, 1980, 80-1 CPD 143.

The protest is dismissed in part and denied in part.

A handwritten signature in cursive script that reads "Milton J. Fowler".

For The Comptroller General
of the United States