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**DECISION**



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

FILE: B-203429

DATE: July 2, 1981

MATTER OF: Arlington Electrical Construction Co.

**DIGEST:**

1. Protest of small business size status is dismissed since Small Business Administration has conclusive authority to determine matter.
2. Protest of affirmative responsibility determination is dismissed where protester does not allege fraud or that solicitation contains definitive responsibility criteria which were not applied.
3. Protest of bid bond's validity is denied where record contains certified power of attorney from corporate surety authorizing execution of bonds on its behalf and affidavit from attorney-in-fact stating bond was executed for surety.

Arlington Electrical Construction Company protests the Veterans Administration's (VA) award of a contract to either the low or the second low bidder under an invitation for bids (IFB) to perform construction work at the Hines Data Processing Center, Hines, Illinois (Project No. 201-007, Specification No. 8059). The procurement was set aside for small business.

Arlington Electrical, which was the third low bidder, raises the following grounds of protest: 1) that the first low bidder allegedly does not meet the small business size standard requirement that a firm's average annual receipts for its preceding three years not exceed five million dollars; 2) that the first and second low bidders allegedly cannot meet the IFB general requirement that at least 30 percent of the construction

*[Protest of VA Contract Award]*

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work must be performed by the prime contractor's own employees; and 3) that the bid bond submitted by the second low bidder, Joseph Construction Company, may be invalid because the firm is unknown to the local office of the corporate surety which issued the bond.

The protest is without merit in part and not for our consideration as to the balance.

We will not consider the allegation that the low bidder exceeds the monetary small business size standard limitation because the Small Business Administration (SBA) is empowered to conclusively determine matters of small business size status for Federal procurement purposes. JAN Devices, Inc., B-202435, March 31, 1981, 81-1 CPD 243. In this regard, the VA has advised us that a small business size status protest has been filed with the SBA.

Regarding the first and second low bidder's abilities to perform at least 30 percent of the work without subcontracting as required by the general provisions, we point out that this protest ground raises a question of the bidders responsibility, i.e., a firm's ability or capacity to perform all the contract requirements within the limitations prescribed by the solicitation. Potomac Documentation and Design, Inc., B-197347, B-197349, September 19, 1980, 80-2 CPD 211. The responsibility determination must be made by the contracting officer prior to award, and our Office does not review protests against affirmative determinations of responsibility unless the protester shows either fraud on the part of the procuring officials or that the solicitation contains definitive responsibility criteria which allegedly have not been applied. Civet Corporation, B-203162, May 27, 1981, 81-1 CPD 417. The protester has done neither.

Finally, concerning the bid bond, the VA has advised us that the corporate surety confirmed the validity of

the bond. Moreover, the VA has forwarded copies of the bid bond, a certified power of attorney from the surety authorizing the individual who executed the bond to do so on the surety's behalf, and an affidavit from that individual (the attorney-in-fact) that the bond was executed for the corporate surety. These adequately evidence the validity of the bond. See Department of Agriculture, Forest Service--Advance Decision, B-198915, July 1, 1980, 80-2 CPD 5.

The first and second grounds of protest are dismissed, and the third ground is summarily denied.



Acting Comptroller General  
of the United States