

J. 17685

21006

DECISION



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

FILE: B-204575, B-204912

DATE: March 3, 1982

MATTER OF: Johnson & Wales College, NonPublic
Educational Services, Inc.

DIGEST:

Question of small business' responsibility (accreditation requirement) is for consideration by the Small Business Administration under certificate of competency procedures.

Johnson & Wales College (J & W) and NonPublic Educational Services, Inc. (NESI), protest the actions of the Army under two solicitations to procure educational instruction for Army personnel.

Both solicitations contained mandatory accreditation requirements. In one instance, under solicitation No. DABT01-81-B-0116-4 issued by Fort Rucker, the contracting officer determined that NESI was the low responsive, responsible bidder and proposed to award it the contract. J & W was the next low bidder. In the other instance, under solicitation No. DAKF31-81-Q-0737, issued by Fort Devens, the contracting officer determined that NESI, the low offeror, was nonresponsible because it did not meet the accreditation requirement. Award was made to J & W, the next low offeror. J & W protested the Army's determination at Fort Rucker. NESI protested the Army's action at Fort Devens. In both instances, NESI indicated that it was associating itself with the University of Florida. NESI also certified on both solicitations that it was a small business.

Based on the following, we dismiss both protests.

While the accreditation provisions differed in each solicitation with respect to whether national or regional accreditation was required, as all of the parties concede, it is clear that in both solicitations the requirements constituted definitive responsibility criteria. See Johnson & Wales College, B-200140, June 8, 1981, 81-1 CPD 456.

After the protests were filed with our Office, the Army determined that NESI was nonresponsible under both solicitations for failure to satisfy the accreditation requirements. The Army proposes to refer these determinations to the Small Business Administration (SBA) under the certificate of competency (COC) procedures because NESI is a small business. NESI now argues that it is a responsible bidder under any reasonable interpretation of both accreditation requirements and requests that our Office direct the Army to find it responsible under both solicitations. J & W agrees with the Army's nonresponsibility determination, but contends that referral to SBA is inappropriate because the determination relates to a matter unrelated to NESI's status as a small business or its capacity, credit, tenacity or perseverance.

The question of NESI's responsibility is not for consideration by our Office. It is well settled that, under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. I, 1977), and section 1-705.4(c) of the Defense Acquisition Regulation (1976 ed.), no small business concern may be precluded from award because of a nonresponsibility determination without referral of the matter to the SBA for a final disposition under the COC procedures, regardless of the basis for the nonresponsibility finding. MPT Enterprises, B-203121, June 8, 1981, 81-1 CPD 464. The SBA is empowered to certify conclusively to Government procuring officials with regard to all aspects of a small business' responsibility, which includes definitive responsibility criteria. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322.

Accordingly, we agree with the Army that the nonresponsibility determinations are for consideration by the SBA under its COC procedures.

Harry R. Van Cleve
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Acting General Counsel