

DECISION

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

PL-2
Martin
12.02.01

FILE: B-209193.2

DATE: December 22, 1982

MATTER OF: Hooper Holmes, Inc.

DIGEST:

Protest challenging capability of awardee to perform contract relates to matter of responsibility which will not be reviewed absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been applied. Neither exception is present here.

Hooper Holmes, Inc. protests the award to a competitor of a contract for investigative services under invitation for bids No. M3-1-83 by the Veterans Administration (VA). Hooper Holmes, the second low bidder, contends that it is clear that the Veterans Administration failed properly to assess the awardee's responsibility because that firm does not have the staffing, experience or background to fulfill its obligations under the contract. For the reasons discussed below, this protest is dismissed.

Hooper Holmes states that its "primary concern" is that the VA either failed to make any assessment of the responsibility of the apparent low bidder or that it made such an assessment but abused its discretion by failing to reach "the only reasonable conclusion," which would be that the apparent low bidder was not a responsible prospective contractor.

A contracting officer may not award a contract without first making an affirmative determination that the prospective contractor is responsible. Federal Procurement Regulations (FPR) § 1-1.1204-1(a) (1964 ed. amend. 192). In many instances, the contracting officer will request that a preaward survey be made of the prospective contractor or will seek information about the bidder from other sources. The contracting officer is not required to do so, however, and can base an affirmative determination

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on whatever information reasonably satisfies him or her. The contracting officer's affirmative determination may be formalized in a memorandum for the file or by signing the contract. Both the procurement regulations and our Office recognize the latter as the making of an affirmative determination of responsibility. FPR § 1-1.1204-1(a); Environmental Laboratory of Fayetteville, Inc.--Reconsideration, B-205593.3, March 1, 1982, 82-1 CPD 179.

Since 1974, our Office consistently has refused to review such affirmative determinations absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were misapplied. Mica, Inc., B-208848.5, September 23, 1982, 82-2 CPD 264; Policy Research Incorporated, B-200386, March 5, 1981, 81-1 CPD 172. Hooper Holmes does not argue that either exception is present here; rather, it argues that according to its information, the awardee lacks the capabilities necessary to perform the contract. The contracting officer disagrees. Under these circumstances, we have no basis for reviewing her affirmative determination of responsibility.

Harry R. Van Cleve
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Acting General Counsel