

DECISION

eslah (Eaton) Proc
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

25418

FILE: B-210515

DATE: June 9, 1983

MATTER OF: Metro Sales Corporation

DIGEST:

GAO will not consider protest concerning procurement actions of Department of Housing and Urban Development in connection with property maintenance responsibilities under National Housing Act, 12 U.S.C. § 1701 et seq. (1976), in view of Secretary's broad statutory authority to make expenditures in connection with those responsibilities.

Metro Sales Corporation protests the rejection of its bid as nonresponsive by the Department of Housing and Urban Development (HUD) under invitation for bids (IFB) No. 0002-83-043. We dismiss the protest.

The IFB solicited bids to provide credit reports on individuals buying HUD-held properties under the Federal Housing Act mortgage insurance program, and required evidence of bidders' agreements with qualified public record reporting services. The contracting officer found that Metro's bid did not contain the required agreements and did not clearly indicate that Metro could service all the counties in the State of Ohio. Metro, however, contends that the contracting officer mistakenly found this information lacking.

We note first that although the contracting officer characterized the bid as nonresponsive, the basis for rejection actually involves Metro's responsibility. "Responsiveness" concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation; "responsibility" refers to the bidder's apparent ability and capacity to perform all the contract requirements. Skyline Credit Corporation, B-209193, March 15, 1983, 83-1 CPD 257. Metro's agreements with qualified reporting services and ability to service the

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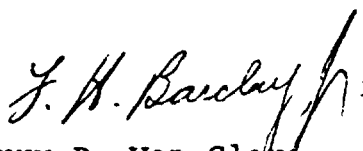
B-210515

entire state clearly fall in the latter category. Moreover, material relating to responsibility, even though required to be submitted with the bids, generally cannot be treated as a matter of responsiveness. Id.

Nevertheless, we will not consider Metro's protest. Although it was not apparent until we received HUD's report, this procurement was conducted under authority of and funded pursuant to the National Housing Act, 12 U.S.C. § 1701 et seq. (1976). The act authorizes the Secretary of HUD to make such expenditures as are necessary to carry out the maintenance or improvement of property without regard to any other provisions of law governing the expenditure of public funds. 12 U.S.C. § 1702.

In view of this extraordinary authority granted the Secretary, we have held that we would have no legal basis to question the expenditure of funds under that provision. Edward H. Pine Insurance, B-211065, April 11, 1983, 83-1 CPD 377.

The protest is dismissed.


for Harry R. Van Cleve
Acting General Counsel