

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

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FILE: B-210390**DATE:** March 13, 1984**MATTER OF:** Americana de Comestibles S.A.**DIGEST:**

Whether an offeror's lack of integrity is sufficient to warrant a finding of nonresponsibility is a matter primarily for decision by the administrative officers concerned, and GAO will not question their decision absent a clear showing that it lacked a reasonable basis.

Americana de Comestibles S.A. (AMERCO) protests the Department of the Army's decision that the firm is nonresponsible for purposes of two contract awards for refuse collection and disposal services at defense installations in the Republic of Panama under request for proposals No. DAKF71-82-R-0160. We deny the protest.

Upon receipt of initial proposals, the contracting officer learned that the president of AMERCO had been under investigation by the Army Criminal Investigation Division (CID) and had been implicated in the theft of commissary goods while employed as the refuse collection manager of Express Transportation Services, Inc. (ETS), the previous contractor for the requirement. The contracting officer also noted that AMERCO's offers, which were the lowest-priced for both contracts, were significantly below the government's estimate and well below the range of most of the other offers. A meeting was held with AMERCO to discuss the firm's financial and technical capabilities, after which the contracting officer concluded that there was uncertainty as to AMERCO's financial capability and doubt as to its ability to secure necessary equipment and personnel to commence operations. In addition, he concluded that the investigative reports of the Army CID cast doubt as to the integrity of AMERCO's president and thus the firm.

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AMERCO's best and final offers were the lowest-priced received. The contracts were awarded to two other firms, however, after the contracting officer determined that AMERCO was nonresponsible. The basis of the nonresponsibility determination was that (1) AMERCO's president did not have a satisfactory record of integrity, (2) the firm's prices were so below the government estimate that AMERCO could not perform the services satisfactorily, and (3) AMERCO did not have sufficient personnel and equipment to begin performance on time.

AMERCO basically contends that the record fails to provide sufficient evidence to establish a lack of integrity, since the firm's president was not indicted on the allegations of theft--AMERCO states the individual instead was "cleared" by the Army CID. In addition, the protester contends that the company has sufficient financial and technical resources to perform the contract.

Before the award of a contract, the contracting officer must make a determination that the prospective contractor is responsible. Defense Acquisition Regulation (DAR) § 1-904.1 (1976 ed.). If the information available to the contracting officer does not indicate clearly that the prospective contractor is responsible, a determination of nonresponsibility is required. DAR § 1-902; Speco Corporation, B-211353, April 26, 1983, 83-1 CPD 458.

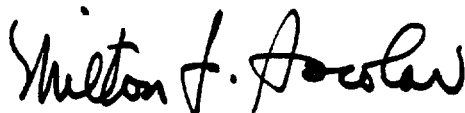
In order for a prospective contractor to be determined responsible, he must have a satisfactory record of integrity, DAR § 1-903.1(iv), the definition of which is no different than its generally accepted connotation. See Mayfair Construction Company, B-192023, September 11, 1978, 78-2 CPD 187. Whether evidence of an offeror's lack of integrity is sufficient to warrant a finding in a particular case that an offeror is not responsible is a matter primarily for determination by the administrative officers concerned, and we will not question their determination in the absence of a clear showing that it lacks a reasonable basis. P.T. & L. Construction Company, Inc., 55 Comp. Gen. 343, 345 (1975), 75-2 CPD 208. In this respect, the lack of integrity of officers, employees, or other associates of an offeror is properly for

consideration in determining that offeror's responsibility when it appears that significant influence might be exercised by those persons in performance of the contract. Speco Corporation, supra.

AMERCO's president clearly controls the company and would manage performance of the Army contracts. Contrary to AMERCO's suggestion, there is no indication in the record that the president was "cleared" by the Army CID. Rather, the indication in the record is that the Army CID investigation was terminated prematurely because the perpetrators of the thefts had become aware of the investigation. Even though AMERCO's president was not formally charged with the commissary thefts which occurred while he was working for ETS, from our review of the record, which includes confidential material relevant to the CID investigation that the Army has asked not be disclosed to the protester, we cannot say that the determination by the contracting officer was not based on substantial evidence, or lacked a reasonable basis. See Mayfair Construction Company, supra.

The record is clear that AMERCO's perceived lack of integrity was deemed sufficient in itself to justify the contracting officer's finding that the firm was not responsible. We therefore need not consider the issue of AMERCO's financial and technical capabilities.

The protest is denied.

for 
Comptroller General
of the United States