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DECISION



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

FILE: B-216440.2 **DATE:** November 19, 1984

MATTER OF: Northern Arizona Gas Service, Inc.--
Reconsideration

DIGEST:

Request for reconsideration is denied where no new facts or legal arguments are raised which show that prior decision was erroneous.

Northern Arizona Gas Service, Inc. requests reconsideration of our decision in Northern Arizona Gas Service, Inc., B-216440, Sept. 24, 1984, 84-2 CPD ¶ 348, involving the possible award of contracts to other bidders by the Bureau of Indian Affairs under solicitation No. N00-84-40. We affirm our decision.

In our prior decision we dismissed Northern Arizona's protest that the other bidders should have been found non-responsible because of their previous performance records in connection with Buy Indian preferences. We pointed out that determinations of responsibility reflect the subjective business judgments of contracting officials, and for that reason we do not consider a protest of a determination that a bidder is responsible unless there is a showing of possible fraud or bad faith on the part of the contracting officials, or that those officials failed to apply definitive responsibility criteria contained in the solicitation.

In its reconsideration request, the protester reiterates its original contention that bidders who failed in the past to comply with the Indian preference requirements should be deemed nonresponsible, and further claims that successful performance history in that respect constitutes a definitive responsibility criterion that must be applied by the contracting officer in the current procurement.

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There is no legal merit to the protesters' position. Definitive responsibility criteria are specific and objective standards established by an agency for a particular procurement for measuring a bidder's ability to perform the contract. These special standards limit the class of bidders to those meeting specified qualitative and quantitative qualifications necessary for contract performance. Watch Security, Inc., B-209149, Oct. 20, 1982, 82-2 CPD ¶ 353. A definitive criterion must be met before the bidder can be awarded the contract. See Hatch & Kirk, Inc., B-214024, June 11, 1984, 84-1 CPD ¶ 614.

While the evaluation of a prospective contractor's past compliance with an Indian preference requirement may well be considered by the contracting official in reaching a determination of responsibility, a record of successful performance does not normally equate to an objective measure of capability or eligibility absent, as here, an express solicitation statement to that effect. Therefore, the allegation that a contractor did not meet its obligation under prior contracts involves the type of challenge to an affirmative determination of responsibility which will not be reviewed by this Office unless the protester shows possible fraud or bad faith by procuring officials, which is not the case here. Newgard Industries, Inc., B-216272, Sept. 24, 1984, 84-2 CPD ¶ 337.

We also point out that we do not review whether a contractor actually complies with an obligation during the performance of a contract, since that is a matter of contract administration. The protest procedure is reserved for considering whether an award of a contract complies with statutory, regulatory and other legal requirements, not with post-award performance or other administrative matters. ASC Mediacar Service, Inc., B-213724, Dec. 30, 1983, 84-1 CPD ¶ 45.

The protester thus has failed to demonstrate that our prior decision was based on information not previously considered or on an erroneous statement of fact or law. See 4 C.F.R. 21.9(a) (1984). Therefore, the decision is affirmed.

Milton J. Dowler
for
Comptroller General
of the United States