

DECISION



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

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FILE: B-218733.2 **DATE:** August 20, 1985
MATTER OF: Tri-States Services Company

DIGEST:

In negotiated procurement, elimination of small business' proposal from competitive range as technically unacceptable need not be referred to Small Business Administration

Tri-States Service Company (TSS), a small business, protests its elimination from the competitive range under request for proposals (RFP) No. DABT02-85-R-0007 issued by the Department of the Army (Army) as part of an Office of Management and Budget Circular A-76 cost comparison. TSS argues that the elimination of its proposal involves its responsibility and that the matter should have been referred to the Small Business Administration (SBA). We dismiss the protest.

Section M of the RFP, entitled "Evaluation of Proposals," informed offerors that proposals would be evaluated against two technical evaluation factors, identified as comprehension of specification requirements and general management, and three management evaluation factors, including organization and staffing and offeror's experience. The Army evaluated TSS' proposal and determined that it was not in compliance with the terms of the RFP and the Performance Work Statement. The Army concluded that TSS' proposal was not reasonably susceptible of being made acceptable without major revisions and accordingly, the Army excluded TSS from further negotiations.

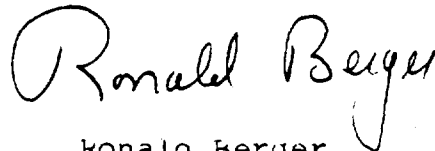
The Small Business Act, as amended, 15 U.S.C. § 637(b)(7)(A) (1982), requires a contracting officer's finding that a small business is not responsible to be referred to the SBA, which will conclusively resolve the question of responsibility by either issuing or refusing to issue a Certificate of Competency. Electro-Methods, Inc., B-215841, Mar. 11, 1985, 85-1 CPD ¶ 293 (citing 15 U.S.C. § 637(b)(7)(A)). However, when a contracting officer determines that an offer is technically unacceptable, the question of responsibility is not involved and, therefore,

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the Act does not apply. Electro-Methods, Inc., supra. Accordingly, the Army's determination that TSS' proposal was technically unacceptable was not required to be referred to SBA, since the Army never reached the question of the firm's responsibility. We point out in this regard that when negotiation procedures are used, traditional responsibility matters such as experience and staffing properly may be encompassed by a technical evaluation that measures the relative ability of offerors to perform. See, e.g., Electrospace Systems, Inc., 58 Comp. Gen. 415 (1979), 79-1 CPD ¶ 264.

Finally, we note that TSS has alleged that the Army unfairly excluded its proposal in order to increase the probability that the solicited services would remain in-house. TSS has submitted no evidence to support its contentions and the Army has informally advised our Office that a tentative decision has been made to contract out for this requirement. Accordingly, we find TSS' allegation wholly speculative and will not consider it. R. P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 CPD ¶ 39.

The protest is dismissed.



Ronald Berger
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General Counsel