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DECISION



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

FILE: B-220406.2

DATE: December 10, 1985

MATTER OF: Dismas House of Kentucky, Inc.

DIGEST:

1. Contention that awardee had not met definitive responsibility criterion, first raised in request for reconsideration but without any identification of such criterion does not provide a basis for reconsideration. Moreover, this contention based on same allegations made in original protest, is untimely and will not be considered since the request was not filed within 10 days of filing the original protest, the date on which, at the latest, the protester knew or should have known the basis of protest.
2. Whether awardee will actually perform in accordance with terms of contract is a matter of contract administration which is not for GAO consideration.

Dismas House of Kentucky, Inc. requests reconsideration of our decision, Dismas House of Kentucky, Inc., B-220406, Nov. 4, 1985, 85-2 CPD ¶ _____, dismissing its protest challenging the award of a contract to Bannum Enterprises under request for proposals (RFP) No. 274-046-5, issued by the Federal Bureau of Prisons for residential care for federal offenders in a community residential treatment center. We deny the request for reconsideration.

In its original protest, Dismas House argued that Bannum was not capable of providing the services called for in the RFP because it had not obtained--and would be unable to obtain--the requisite zoning permit for a residential treatment facility. The protester also argued that Bannum had a history of unsatisfactory performance and lacked business integrity. We dismissed the protest on the

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grounds that the protester's contentions amounted to a challenge of the contracting agency's affirmative determination of the awardee's responsibility, and that we would not review such a determination absent a showing that it was the product of bad faith or fraud or that definitive responsibility criteria in the solicitation had not been met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985). We noted that the protester had not argued, nor did we see any evidence, that either of the above exceptions applied in this instance.

In its request for reconsideration, Dismas House now contends that Bannum did not satisfy an alleged definitive responsibility criterion in the solicitation requiring zoning clearance for its facility. It cites no language from the solicitation regarding zoning, however, and presents no argument as to why zoning clearance should be regarded as a definitive responsibility criterion. Thus, it appears that the protester has simply recast its argument in an attempt to bring its protest within the exception in our regulations under which we will review protests challenging affirmative determinations of responsibility. It has not, however, by its mere referral to definitive responsibility criterion, without any identification of such criterion, sufficiently established that such criterion exist.

Moreover, our regulations do not contemplate such piecemeal presentation of arguments as we have here, and we will not consider allegations raised for the first time in a request for reconsideration unless the request itself constitutes a timely protest. Allied Bendix Aerospace, B-218869.2, June 6, 1985, 85-1 CPD ¶ 651. Since Dismas House's request for reconsideration relies on the same allegations raised in its original protest, the basis for its argument that the solicitation's definitive responsibility criterion had not been met should have been evident, at the latest, when the original protest was filed. Our regulations require that a protest based on such allegations be filed within 10 days after the protester knew or should have known the basis for protest. 4 C.F.R. § 21.2(a)(2). Since Dismas House's request for reconsideration

was not filed until November 18, considerably more than 10 days after the original protest was filed on October 30, it cannot be considered as timely raising the issue. Sermor, Inc.--Request for Reconsideration, B-219173.2, Oct. 28, 1985, 85-2 CPD ¶ 470.

Dismas House also points out that on November 8, 1985, a local court issued a restraining order prohibiting Bannum from operating a half-way house and maintains that the awardee will not be able to perform. The agency has determined Bannum to be responsible based on the information available at that time and awarded that firm the contract. Whether after award the firm will actually perform in accordance with the terms of the contract is a matter of contract administration which is not for our consideration. 4 C.F.R. § 21.3(f)(1).

Finally, Dismas House reiterates its view that its performance under the contract would be superior in various respects to the awardee's performance. Our reconsideration procedure is reserved for review of alleged errors of law and information not previously considered in the prior decision. 4 C.F.R. § 21.12(a). As we have already considered and dismissed these arguments, we will not consider them here.

The request for reconsideration is denied.


for Harry R. Van Cleve
General Counsel