



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mantenimiento Europea, S.A.
File: B-227907
Date: August 21, 1987

DIGEST

1. Whether firm awarded contract is not meeting its performance obligations is a matter of contract administration that the General Accounting Office (GAO) will not consider.
2. The GAO will not review a contracting agency's affirmative responsibility determination where there is no allegation or showing that the contracting officials acted fraudulently or in bad faith, or misapplied definitive responsibility criteria.

DECISION

Mantenimiento Europea, S.A. protests the award of a contract to Jacarza, S.L. under request for proposal (RFP) No. F61308-87-R-0030, issued April 30, 1987, by Torrejon Air Base, Spain for custodial services. The protester contends that the awardee, the incumbent contractor, has only utilized four employees in its past performance while being paid for eight people, which the protester alleges was the minimum required, and that Jacarza only intends to utilize four employees under the present RFP which allegedly also calls for a minimum of eight. We dismiss the protest.

Whether the contractor met its contractual obligations under the prior contract is a matter of contract administration which is the responsibility of the procuring agency; we will not review such matters under our bid protest function. 4 C.F.R. § 21.3(f)(1). In any case, the agency states in its report it has verified that the contractor is in fact performing with eight employees.

The protester's contention that the protester intends to deviate from alleged requirements of the current RFP involves Jacarza's responsibility--that is its ability to perform as required under the solicitation. Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.104-1 (1986).

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A contracting officer necessarily must make an affirmative determination of a bidder's responsibility, before awarding a contract. FAR, 48 C.F.R. §§ 9.103(a) and (b). Here, the contracting officer determined that Jacarza was a responsible firm, and the agency reports that there were no complaints about Jacarza's past performance or other reasons to find the firm nonresponsible.

Our Office will not review an affirmative determination of responsibility absent a showing of either fraud or bad faith on the part of contracting officials or that the solicitation contains definitive responsibility criteria that have not been applied. 4 C.F.R. § 21.3(f)(5) (1987); Quality Transport Services, Inc., B-225611, Mar. 26, 1987, 87-1 CPD ¶ 346. As the protester has neither alleged nor shown that either exception applies here, we will not review the contracting officer's determination.

The protest is dismissed.



for Ronald Berger
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