



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Service Contractors, Inc.

**File:** B-234311

**Date:** April 3, 1989

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### **DIGEST**

1. General Accounting Office will consider protests by third parties concerning the Small Business Administration's issuance of a certificate of competency only upon a prima facie showing that government officials acted fraudulently or in bad faith or willfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria.

2. Protest by sixth low bidder that all lower-priced bidders are nonresponsible is premature with respect to intervening bidders that are not currently in line for award.

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### **DECISION**

Service Contractors, Inc. (SCI), protests the award of a contract to any other firm that bid lower than SCI under invitation for bids (IFB) No. DAKF31-88-B-0805, issued by the Department of the Army for aseptic cleaning services at Cutler Army Hospital, Fort Devens, Massachusetts. SCI, the incumbent contractor, is the sixth low remaining bidder. SCI argues that the lower-priced firms do not meet the definitive criteria in the IFB regarding contractor experience and are, therefore, nonresponsible.

We dismiss the protest.

The IFB, a total small business set-aside, was issued on December 16, 1988. Section C-1, Paragraph 1.2, "Contractor Experience," provides that "[t]he Contractor shall have been engaged in the business of providing hospital housekeeping services in . . . vital patient care areas . . . for 36 months from the date established for receipt of bids."

Eleven bids were received at the time of bid opening on January 17, 1989. On February 9, the agency requested more information from the bidders regarding their satisfaction of

the contractor experience requirement. Based on this information, the contracting officer determined the low bidder and the second low bidder to be nonresponsive for failing to meet the definitive criteria regarding 36 months of experience providing hospital housekeeping services.<sup>1/</sup> The contracting officer also determined the third, fourth and fifth low bidders to be responsive and responsible.

On February 16, the contracting officer referred the question of the low bidder's responsibility to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). By letter of February 22, the SBA placed this matter into suspense status pending the outcome of SCI's protest to our Office.<sup>2/</sup>

Responsibility refers to a bidder's capacity to perform all contract requirements, and is determined not at bid opening, but at any time prior to award based on any information received by the agency up to that time. See Great Lakes Dredge & Dock Co., B-221768, May 8, 1986, 86-1 CPD ¶ 444. Definitive responsibility criteria are specific and objective standards established by an agency for use in a particular procurement to measure a bidder's ability to perform the contract. See Antenna Products Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. These special standards put firms on notice that the class of prospective contractors is limited to those that meet qualitative or quantitative criteria deemed necessary for adequate performance. Id. In this case, we think that the requirement that the contractor have experience in hospital housekeeping services in vital patient care for 36 months is such a definitive responsibility criterion.

However, the contracting officer here determined that the low bidder did not satisfy the definitive responsibility criterion in the IFB. At that point, because the firm is a small business concern, the agency properly referred its nonresponsibility determination to the SBA for consideration

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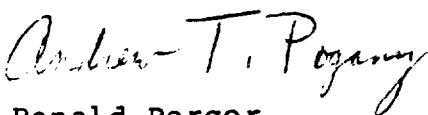
1/ Previously, another firm, which initially appeared to be low, was allowed to withdraw because of a mistake in its bid.

2/ We do note that we are unaware of any legal requirement or any other reason for the SBA to suspend the low bidder's application for a COC pending a decision on a protest by our Office.

under the SBA's COC procedures. See Antenna Products Corp., B-227116.2, supra. The SBA, not the General Accounting Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility by issuing or refusing to issue a certificate of competency. See Mark's Movers and Storage, Inc., B-229945, Jan. 22, 1988, 88-1 CPD ¶ 64.

For the reasons that follow, we will not review this protest. First, to the extent that the protester contends that the agency should have rejected the low bid because the bidder was nonresponsible, we note that the agency did in fact determine that firm to be nonresponsible. Second, to the extent that the protester is objecting to an anticipated issuance of a COC by the SBA for the low bidder, our Office will consider protests by third parties concerning the SBA's issuance of a COC only upon a prima facie showing that government officials acted fraudulently or in bad faith or willfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria. See Sun Environmental, Inc., B-228491, Oct. 29, 1987, 87-2 CPD ¶ 435. Since here the SBA has not yet acted, we fail to see any basis for our review. Third, to the extent that the protester questions the responsibility of the other intervening bidders, we note that the low bidder is the only firm in line for award depending on the SBA proceedings. Until the resolution of those proceedings, we think that the protest is premature concerning these other bidders which, as the record shows, are not yet in line for award.

The protest is dismissed.

*for*   
Ronald Berger  
Associate General Counsel