



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pais Janitorial Service & Supplies, Inc.

File: B-244157

Date: June 18, 1991

Victor G. Martinez for the protester.
M. Penny Ahearn, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency was not required to refer rejection of protester's offer based on grounds of technical unacceptability to Small Business Administration for certificate of competency determination where firm's proposal was determined not to be within competitive range, since in rejecting firm's offer agency did not reach the question of offeror's responsibility.

DECISION

Pais Janitorial Service & Supplies, Inc. protests the rejection of its proposal under request for proposals (RFP) No. F41691-90-R0058, issued by the Department of the Air Force for janitorial services. The protester contends that the agency should not have rejected its proposal without referring the matter to the Small Business Administration (SBA) under certificate of competency (COC) procedures.

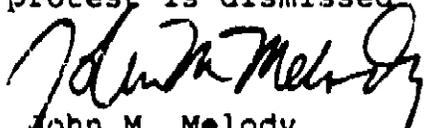
We summarily dismiss the protest without obtaining a full agency report since on its face the protest does not state a legally valid basis of protest. See 4 C.F.R. § 21.3(m) (1991).

The Air Force determined that Pais's technical proposal failed to meet the solicitation's minimum requirements because it was deficient in four out of five of the technical evaluation criteria and would require major revisions to make it acceptable. Consequently, the firm's proposal was eliminated from the competitive range. In its protest, Pais does not take issue with the Air Force's determination as to the technical unacceptability of the firm's proposal. Instead, Pais simply argues that the Air Force should not have rejected its offer as technically unacceptable without first referring

the matter to the SBA because it contends its responsibility is at issue.

This argument is without merit. While no small business may be precluded from award because of nonresponsibility without referral of the matter to the SBA for a final determination, 15 U.S.C. § 637(b)(7)(A) (1988); Pacific Sky Supply, Inc., 64 Comp. Gen. 194 (1985), 85-1 CPD ¶ 53, Pais was not found nonresponsible, that is, incapable of meeting the obligations that it would incur if awarded the contract. Rather, Pais's proposal was determined to be technically unacceptable when evaluated under the criteria specified in the RFP. In this circumstance, even where the evaluation factors are related to responsibility, a proposal from a small business, such as Pais, may be rejected as technically unacceptable even when based in part on responsibility-type considerations without referral of the question to the SBA for possible issuance of a COC. TM Sys., Inc., B-236700, Dec. 21, 1989, 89-2 CPD ¶ 577; Systec, Inc., B-205107, May 28, 1982, 82-1 CPD ¶ 502. Consequently, here, the Air Force's determination of the technical unacceptability of Pais's proposal was not required to be referred to the SBA.

The protest is dismissed.


John M. Melody
Assistant General Counsel