



**Comptroller General
of the United States**

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Washington, D.C. 20548

Matter of: Peterson Accounting--CPA Practice

File: B-257411

Date: September 21, 1994

Carla Peterson for the protester.
Joyce A. Perkins, Department of Agriculture, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody,
Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Protest objecting to rejection of small business bid as nonresponsive is sustained where determination was in reality one of nonresponsibility, and contracting officer failed to refer the matter to the Small Business Administration for consideration under certificate of competency procedures.

DECISION

Peterson Accounting--CPA Practice, a woman-owned small business, protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. IB-5241-4-0001, issued by the Department of Agriculture, Farmers Home Administration (FmHA), for review and analysis of the annual reports furnished by recipients of Rural Rental Housing (RRH) Multi-Family Housing loans in the state of Indiana.

We sustain the protest.

Recipients of RRH Multi-Family Housing loans are required to furnish annual reports, which must include either an audit report (for projects with 25 or more units) or a verification of accounts (for projects with 24 or fewer units). The solicitation here sought the services of a contractor to review these reports, and to verify that they had been prepared in accordance with FmHA regulations and generally accepted government auditing standards.

To demonstrate that they were responsible (i.e., capable of successful performance), bidders were instructed to submit with their bids a brief proposal demonstrating the bidder's understanding of the statement of work (SOW) and its plan

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for performance, references, resumes for all accountants expected to work on the contract, and a sample audit completed in accordance with the guidelines set forth in the generally accepted government auditing standards.

Seventeen bids were received by the March 30, 1994, bid opening date. Peterson's price of \$11,572 was the lowest of the seventeen. Peterson's bid did not take exception to any of the IFB's requirements. The contracting officer nonetheless determined that the bid was nonresponsive because the protester had not furnished enough information to demonstrate its understanding of the SOW, its plan for performance, and because the audit submitted was a performance, as opposed to a financial, audit. According to the contracting officer, Peterson's ability to perform the work required could not be determined on the basis of the information provided. The contracting officer awarded a contract to Dauby O'Connor Henderson & Zaleski on May 20.

Peterson objects to the rejection of its bid as nonresponsive. The protester contends that the contracting officer's finding was actually one of nonresponsibility, and that a determination that it lacked the ability to perform was unwarranted. We agree that the finding was one concerning responsibility.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive. Braswell Servs. Group, Inc., B-248336, Aug. 19, 1992, 92-2 CPD ¶ 113. Responsibility, on the other hand, refers to a bidder's apparent ability and 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. Id.

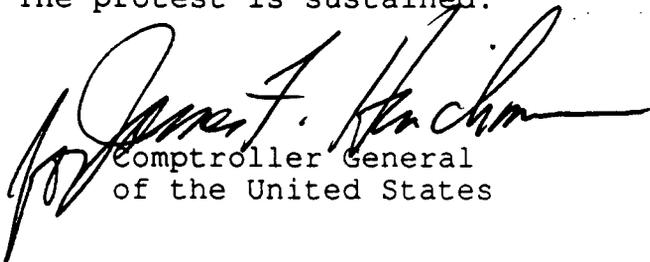
By signing and submitting its bid without taking any exceptions to the solicitation, Peterson offered to perform the work in conformance with all the terms and conditions of the solicitation. Thus, its bid was responsive. Luther Constr. Co. Inc., B-241719, Jan. 28, 1991, 91-1 CPD ¶ 76. The contracting officer's conclusion that Peterson's bid was nonresponsive therefore was improper; the conclusion that Peterson had not submitted the information required to demonstrate its ability to perform the work was in fact a determination that Peterson is not a responsible firm.

The Small Business Act, 15 U.S.C. § 637(b)(7) (1988), provides that the Small Business Administration (SBA) has

conclusive authority to determine the responsibility of a small business concern and that when a procuring agency finds that a small business is nonresponsible it must refer the matter to the SBA for a final determination under the certificate of competency (COC) procedures. RKR, Inc., B-247619.2, Oct. 28, 1992, 92-2 CPD ¶ 289. Here, since Peterson had certified itself as a small business in its bid, rejection of the bid on the grounds of nonresponsibility without referral to the SBA for consideration under its COC procedures was improper.

We recommend that the agency refer the matter to the SBA for consideration under the COC procedures.¹ If SBA issues a COC, the agency should terminate for convenience the contract awarded to Dauby O'Connor Henderson & Zaleski and make award to Peterson. In addition, we find that Peterson is entitled to recover the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(e). In accordance with 4 C.F.R. § 21.6(f), Peterson's certified claim for such costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.



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¹The protester also challenges the nonresponsibility finding itself, arguing that the contracting officer should have considered other evidence bearing on its capability to perform in addition to the sample audit. Given SBA's conclusive authority in this area, this issue is not for our review. See 4 C.F.R. § 21.3(m)(3) (1994). However, before referring the nonresponsibility determination to SBA, the contracting officer may reconsider the issue of Peterson's responsibility, taking into account not simply the sample audit submitted by the protester with its bid, but also any other information of which she is aware bearing on the protester's capability to perform.