



Comptroller General  
of the United States

Washington, D.C. 20548

*Stephanie Becker*  
*Signed by Christine*  
*Melody*

## Decision

**Matter of:** ASC MEDI-CAR, Inc.

**File:** B-262070

**Date:** July 25, 1995

### DECISION

ASC MEDI-CAR, Inc. protest the award of a contract to American Pony Express, Inc. by the Department of Veterans Affairs under solicitation No. 69-D (CSC) 297-95. ASC MEDI-CAR alleges that American Pony Express cannot meet the requirements of the solicitation, that American Pony Express's employees will not be paid appropriate wage rates, and that American Pony Express may not be a small business.

We dismiss the protest.

A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177.

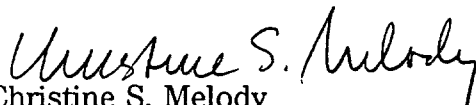
Further, by signing the offer and not taking exception therein to a specification requirement, an offeror is committed to performing in accordance with the requirements. From the protester's submission there is no basis for concluding that the awardee has not committed itself to meeting the requirements. Whether the awardee has the ability and intention of doing so is simply a matter for the contracting officer, in the exercise of his discretionary business judgment, to consider in making his responsibility determination. As stated above, that determination is not subject to our review, except in circumstance not present here.<sup>1</sup>

<sup>1</sup>One circumstance involves bad faith on the part of the contracting officer, a matter not raised nor suggested by the protester. The other circumstance involves the imposition by a solicitation of a specific standard of responsibility that has to be met as a precondition of award. A common example of such a standard is a

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ASC MEDI-CAR also questions whether American Pony Express is a small business. This matter is also not for consideration by our Office. The Small Business Act, 15 U.S.C. § 637(b)(6) (1988), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.3(m)(2); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71. Thus, we will not review a protester's challenge to another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of conducting federal procurements. Survive Eng'g Co., *supra*; Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297.

The protest is dismissed.

  
Christine S. Melody  
Acting Associate General Counsel

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requirement for a certain level of experience. See, e.g., J.D. Miles & Sons, Inc., B-251533, Apr. 7, 1993, 93-1 CPD ¶ 300. Contractor performance requirements, however, are not regarded as imposing special standards of responsibility—they simply establish requirements that the contractor has to meet after award and during performance. See Preventive Health Programs, B-195846, Feb. 20, 1980, 80-1 CPD ¶ 144 (specification requiring contractor to furnish radiology services through "board certified or board eligible" radiologists is a performance requirement rather than a special standard of responsibility). The requirements here, to have the required number of vehicles, to hire and train drivers with appropriate licenses, and to have appropriate inspections and licenses for the vehicles, are such performance requirements. Further, we have consistently held that even where a firm offers prices lower than the applicable minimum wage rates, that does not eliminate the obligation to comply with the wage rates. See Stanley Aviation, Inc., B-256650, July 14, 1994, 94-2 CPD ¶ 23 (where we concluded that a bidder offering hourly rates below those specified in a Service Contract Act (SCA) wage determination is eligible for contract award where its bid does not evidence an intent to violate the SCA and the firm is otherwise determined to be responsible); Contact Int'l Corp., B-246937, Dec. 20, 1991, 91-2 CPD ¶ 571 (a below-cost offer, by itself, does not provide a legal basis to reject an offer).