

7
DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

50959

FILE: B-183844

DATE: July 31, 1975

MATTER OF: National Flooring Company

97324

DIGEST:

1. Protests against affirmative determinations of responsibility are not reviewed unless either fraud is alleged on the part of procuring officials or where solicitation contains definitive responsibility criteria which allegedly have not been applied.
2. Where there was reason to question low offeror's eligibility for award and urgent need for material existed, agency's decision to survey second low bidder was consistent with applicable regulation and no basis exists to question procedure followed.
3. Whether Government should terminate a contract for default and reprocure against contractor's account are matters of contract administration which are the function and responsibility of the contracting agency and not for resolution pursuant to GAO's bid protest function.

National Flooring Company has protested on several bases the contract award to American Biltrite, Inc. under solicitation AT/DQ18286, issued by the General Services Administration (GSA) for rubber foam matting.

Initially National contends that the contractor should have been determined nonresponsible because of the firm's inadequate performance on prior contracts.

This Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

National also questions whether GSA improperly permitted American Biltrite to negotiate a price reduction without extending a similar opportunity to National. In this connection National apparently assumed that it initially was the low offeror since GSA performed a pre-award survey on its plant facility and financial resources.

Our review of the record of this procurement establishes that contract award was made to American Biltrite on the basis of its original offer, which was lower than the one submitted by National. The contracting officer has reported that under normal circumstances a pre-award survey would have been requested only for the low responsive offeror. However, if there is reason to question the low offeror's eligibility for award, GSA Procurement Regulation 5A-1.1205-2 provides for surveying the firm next in line for award. Apparently, National raised questions with GSA regarding the performance record of American Biltrite. On the basis of National's inquiry together with the urgent need for the material, the contracting officer decided to survey National, the second low offeror. Accordingly, we see no reason to question the procedures followed in this case.

Finally, the protester argues that should American Biltrite fail to meet its delivery schedule, the protester "will insist upon reprocurement activity in accordance with default provisions" of the contract. Whether the Government should terminate a contract for default and reprocure against the contractor's account are matters of contract administration and are primarily a function and responsibility of the contracting agency. Such matters are not ordinarily for resolution pursuant to our bid protest function, pursuant to which we consider the propriety of the award, or proposed award, of a contract.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States