



DECISION

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

FILE: B-194328

DATE: August 17, 1979

MATTER OF: Prestype, Inc.

CNG
00930

DIGEST:

1. GAO does not review affirmative determinations of responsibility unless there is showing of fraud or allegation of failure to meet definitive responsibility criteria; nor does GAO conduct independent investigations to establish validity of protester's speculative statements.
2. If procuring agency does not find small business responsible, it is required by law to refer matter to Small Business Administration, which conclusively resolves matter by issuing or refusing to issue Certificate of Competency.
3. When there is no factual basis in record to support protester's allegation that low offeror's price was not independently determined, protest on this ground will be denied.

Prestype, Inc. (Prestype) protests the proposed award of a General Services Administration (GSA) contract for graphic arts supplies to Art Supply Warehouse. For the reasons outlined below, the protest is dismissed in part, and denied as to the remainder.

Prestype was one of 18 contractors for chart supplies and letters listed on Federal Supply Schedule FSC 75, Part II, Section A, from March 1978 through February 1979. Its contract contains a renewal provision which GSA indicates it may not exercise, since Art Supply Warehouse has offered a lower price for the items in question.

Prestype alleges that Art Supply Warehouse is not responsible, (1) because it is a Los Angeles retailer and lacks a national network of dealers

ABC 00017
DLB 02594

Pass term: Art supplies
Contract award protests
Bidding responsibility
Certificates of competency
Small business contracts
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PROPOSED
[Protest ALLEGING Awardee
Is Not Responsible]

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and distribution facilities, and (2) because it is not financially responsible. As evidence of the latter, Prestype, which serves more than 300 dealers, including Art Supply Warehouse, states that the firm has failed to make payments when due; as a result, Prestype has limited Art Supply Warehouse's line of credit.

In addition, Prestype alleges that Art Supply Warehouses's prices were not arrived at independently. Prestype believes that a GSA employee improperly contacted the firm, soliciting its offer and supplying information about Prestype's prices. Prestype also alleges that GSA orally amended the solicitation for Art Supply Warehouse's benefit.

Prestype argues that it is better qualified than Art Supply Warehouse, not only because of its dealers, who are able to provide immediate delivery to far-flung Government installations, but also because it is a small business, operating in a labor surplus area, and has a woman president. Prestype demands that we investigate Art Supply Warehouse's responsibility and provide its counsel with complete files on the subject.

As we have advised counsel for Prestype, our Office does not review affirmative determinations of responsibility unless there is a showing of fraud or an allegation of failure to meet definitive responsibility criteria. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. We do not believe either is present here. Nor do we conduct independent investigations to establish the validity of a protester's speculative statements. Id.

The "improper" contacts which Prestype alleges, according to GSA, were between Art Supply Warehouse and the agency's Los Angeles Business Service Center (the Center). Such centers are designed to encourage prospective bidders and to help them compete for Government contracts; this type of assistance, according to GSA, would be available to Prestype if desired. See generally 41 C.F.R. Subpart 5A - 1.54 (1978).

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The record shows that the Center counseled Art Supply Warehouse, which is on GSA's bidder mailing list for artist, drafting, and engineering supplies, after the firm asked whether it might submit an offer under the 1978 solicitation for the supplies in question. The contracting officer, contacted by the Center, advised that any party might submit an offer, either during the term of the Federal Supply Schedule contracts or at renewal time, since renewals were neither automatic nor limited to current contractors. At the Center's request, the contracting officer sent Art Supply Warehouse a copy of an amendment updating the solicitation for 1979-80; this same amendment, GSA states, was sent to all current contractors and made available to all prospective contractors.

As to whether the proposed awardee independently determined its price, once a Federal Supply Schedule contract is awarded, prices become public information. Thus, as GSA points out, Art Supply Warehouse may have been aware of Prestype's contract prices; however, it has not been given any information on Prestype's quotes for renewal.

We cannot conclude that Prestype has made a showing of fraud. Nor do we believe that a network of dealers and distributors can be considered a definitive responsibility criterion; the solicitation included no such requirement, but merely indicated that contractors should be capable of delivering within 45 days after an order was placed. Prestype's allegations regarding responsibility therefore fall within that category which we decline to consider.


We note that the record contains a letter from Prestype to Art Supply Warehouse, dated February 21, 1979, assuring the firm that as an authorized distributor, it would have a "steady uninterrupted supply of Prestype materials" for its customers. Since GSA indicates that it is still evaluating Art Supply Warehouse's responsibility, we believe the agency will be obliged to evaluate any changes in the firm's ability to deliver due to its limited line of credit. We further note that if GSA does not find Art Supply Warehouse responsible, it is required by law to refer the matter to the Small Business Administration,

which would conclusively determine the firm's responsibility by issuing or refusing to issue a Certificate of Competency. See Old Hickory Services, B-192906.2, February 9, 1979, 79-1 CPD 92.

Finally, we do not believe Prestype's status is relevant to this protest, particularly in view of the fact that Art Supply Warehouse is also a small business, Mexican-American owned, and has a woman president.

Since there is no factual basis in the record to support Prestype's allegation that Art Supply Warehouse's price was not independently determined, the protest on that ground is denied; all other grounds are dismissed.

Deputy


Comptroller General
of the United States