

# DECISION



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

28013

**FILE:** B-212661

**DATE:** April 17, 1984

**MATTER OF:** Athens General Contractors, Inc.

## DIGEST:

1. When competitive bidding is a condition to a local housing authority's receipt of federal funds, the authority must follow certain basic principles of federal procurement law and may award the contract only to the low, responsible bidder.
2. GAO will not disturb a grantee's determination of nonresponsibility unless it lacks a reasonable basis.
3. GAO will examine documents pertaining to a bidder's responsibility that were not disclosed to the bidder to determine if the grantee's determination of nonresponsibility was reasonable.

Athens General Contractors, Inc. (Athens), complains of the rejection of its bid by Saint Mary's Roland View Towers, Inc. (Saint Mary's), submitted in response to an invitation for bids (IFB) for rehabilitation work on a housing project for elderly persons.

Based upon our review of the record, we deny the complaint.

On August 31, 1982, the United States of America and Saint Mary's entered into a Financial Assistance Contract (FAC), pursuant to section 201 of the Housing and Community Development Amendments of 1978, 12 U.S.C. § 1715Z-1a (1982), the United States Housing Act of 1959, 12 U.S.C. § 1701q (1982), and the Department of Housing and Urban Development Act, 42 U.S.C. § 3531 (1976). Under the FAC, Saint Mary's agrees to operate an elderly housing project and the government agrees to provide financial assistance for the project. Section 10 of the FAC provides that when Saint Mary's obtains contracts, it shall "accept the bid which represents the lowest price taking into consideration the bidder's reputation for quality of workmanship or materials, timely performance, [etc.]."

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Saint Mary's issued the instant solicitation after notifying the Department of Housing and Urban Development (HUD) of its intent and approval of the bid package by HUD.

After bid opening, Saint Mary's architectural agent, Structural Preservation System, Inc. (SPS), requested that Athens, as the low bidder, as well as the second and third low bidders, submit information in accordance with the terms of the IFB including the bidder's prior experience as demonstrated by a list of similar completed projects. SPS determined from Athens' submission that award should not be made to Athens and Saint Mary's then awarded the contract to the second low bidder, J&B Contracting, Inc. (J&B).


Athens contends that neither Saint Mary's nor SPS would furnish any reasons for the rejection of its bid; however, Athens states that it understands that Saint Mary's commissioned an evaluation of the three lowest bidders and that J&B was determined to have submitted the highest rated bid. Athens argues that if its bid was rejected as not the highest rated, then the rejection was improper since technical evaluations cannot be applied to advertised procurements. Athens alternatively alleges that if its bid was rejected based upon a determination of nonresponsibility, the determination was unreasonable since Athens had demonstrated in its references that it had previously successfully performed government rehabilitation work. Athens also contends that HUD must furnish our Office a copy of the SPS's determination of responsibility before we may determine whether the SPS found Athens to be nonresponsible consistent with the terms of the IFB.

HUD contends that Athens' bid was rejected due to a determination of nonresponsibility by Saint Mary's based upon the advice of SPS. HUD alleges that the determination was based upon the fact that only one of the jobs submitted by Athens as a reference was for work similar to that required under the instant IFB, and that Athens had difficulty in satisfactorily completing that work. HUD also asserts that Saint Mary's determination was reasonable. Further, HUD submitted a copy of SPS's findings for our in camera review.

Although a local housing authority is not subject to the same statutes and regulations as an agency making a direct federal procurement, HUD's FAC states that in the award of contracts, a housing authority must make award only to the lowest, responsible bidder. Since competitive bidding is, therefore, a condition to receipt of federal financial assistance, a housing authority must follow certain basic principles of federal procurement law. Linde Construction, B-206442, March 17, 1983, 83-1 CPD 271. In direct federal procurements, while a decision as to a prospective contractor's ability to perform (responsibility) should be based on fact and reached in good faith, it is properly left to the contracting agency, which must bear the brunt of any difficulties encountered during performance and must maintain day-to-day relations with the contractor. Linde Construction--Reconsideration, B-206442.2, July 13, 1983, 83-2 CPD 85. Thus, we will not disturb a determination of nonresponsibility unless it lacks a reasonable basis. Bradley Construction, Inc., 62 Comp. Gen. 138 (1983), 83-1 CPD 76.

Here, Saint Mary's determined that Athens was nonresponsive based upon Athens' list of similar completed projects submitted in accordance with the terms of the IFB. While Athens does not have access to SPS's findings concerning Athens' responsibility, we will consider information in an agency report which the agency believes is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (1982). See Bray Studios, Inc., B-207723; B-207746, October 27, 1982, 82-2 CPD 373. Our review of the withheld materials indicates that the determination of nonresponsibility was reasonable.

Accordingly, we deny the complaint.

*for*   
Comptroller General  
of the United States