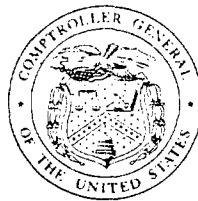


DECISION

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

*J. Sarrett**Page 7**GAO 00046**9103*

FILE: B-192906.2 DATE: February 9, 1979

MATTER OF: Old Hickory Services

DIGEST:

1. Where contracting officer determines small business bidder is nonresponsible, law requires matter be referred to Small Business Administration (SBA) which conclusively determines bidder's responsibility by issuing or declining to issue Certificate of Competency (COC) ← General Accounting Office (GAO) generally does not review these SBA determinations unless protester has made prima facie showing of fraud or willful disregard of facts. *is SBA Determination*
2. Where actions of contracting officer and SBA appear consistent with statutory responsibilities and protester offers nothing of substance to support its bare allegation of improper discriminatory action, GAO will not review denial of COC.

Old Hickory Services (Old Hickory) protests the contract award under Invitation for Bids (IFB) F22600-78-B-0013 for mess attendant services by Keesler Air Force Base, Mississippi, to Maintenance, Inc. (Maintenance).

Although Old Hickory (formerly Superior Services, Inc.) was the apparent low bidder, the contracting officer, following a preaward survey, determined Old Hickory was nonresponsible and referred the matter to the Small Business Administration (SBA) for Certificate of Competency (COC) consideration. On August 30, 1978, the SBA declined to grant Old Hickory a COC.

A preaward survey of Maintenance (the next low bidder) was conducted on September 7 and 8, 1978. The contracting officer determined that Maintenance was

*003575**dec*

also nonresponsible and referred the matter to the SBA for COC consideration. By letter dated October 5, 1978, the SBA issued a COC for Maintenance. Award was made to Maintenance on October 27, 1978, and Old Hickory was advised of the award by letter dated October 31, 1978.

Old Hickory originally filed a protest here on September 19, 1978, concerning the proposed award to Maintenance, but withdrew it on September 21, 1978 upon learning of the contracting officer's determination that Maintenance was also nonresponsible. This protest was filed on December 15, 1978.

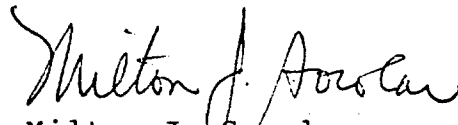
Old Hickory challenges the Government's actions in denying it a COC and granting one to Maintenance. It questions the need for a COC at all in view of the solicitation's requirement for a performance bond, suggests that the denial of the COC was the result of racial discrimination against it, and requests this Office to "investigate."

Old Hickory appears to misunderstand both the laws and regulations governing Government procurement, which admittedly are complex, and the functions of the various agencies involved in the procurement process. First of all, under the law a contract may be awarded only to a bidder who is responsible, that is, one who is capable of and can be expected to perform in accordance with the contract terms and provisions. See 10 U. S. C. 2305(c) (1976); Defense Acquisition Regulation (DAR) 1-902. A performance bond, on the other hand, serves only to protect the Government's financial interest up to the amount of the bond; it does not necessarily assure that performance will be satisfactory in every respect, and is not regarded as a substitute for the statutory requirement that contracts be awarded only to responsible prospective contractors. DAR 10-104.2 (c).

When a contracting officer determines that a small business bidder is nonresponsible, the law requires that the contracting officer refer the matter to the Small Business Administration (SBA), which conclusively

determines the bidder's responsibility by issuing or declining to issue a COC. 15 U.S.C. 637(b)(7) (1976), as amended by Pub. L. 95-89, approved August 4, 1977. This Office generally does not review those SBA determinations, see, e.g., Scona, Inc., B-192355, July 31, 1978, 78-2 CPD 80, unless the protester has made a prima facie showing of fraud or willful disregard of facts, JBS Construction Company, B-187574, January 31, 1977, 77-1 CPD 79; neither, under our Bid Protest Procedures, 4 C.F.R. Part 20 (1978), do we generally conduct independent investigations to establish the validity of a protester's speculative statements. M & H Mfg. Co., Inc., B-191950, August 18, 1978, 78-2 CPD 129. Here, the actions of both the contracting officer and the SBA appear to be consistent with their respective statutory responsibilities, and Old Hickory has offered nothing of substance to support its bare allegations of improper discriminatory action. Under the circumstances, we find no basis for considering the matter further.

The protest is dismissed.


Milton J. Socolar
General Counsel