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**DECISION**



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

**FILE: B-208616**

**DATE: September 13, 1982**

**MATTER OF: Craig Food Enterprise, Inc.**

**DIGEST:**

1. Fact that bidder may enjoy competitive advantage because of incumbency or own particular circumstance does not require Government to equalize competitive position of all bidders.
2. Protest against contracting agency's affirmative determination of responsibility is dismissed where protester fails to show fraud on the part of the procuring officials or that solicitation contains definitive responsibility criteria which allegedly have not been applied.
3. Protest concerning bidder's small business size status is not for review by GAO since by law it is a matter for decision by Small Business Administration.

Craig Food Enterprise, Inc. (Craig), protests under solicitation No. IFB BUR-9-82, a small business set-aside by the Immigration and Naturalization Service (INS), Burlington, Vermont. The contract is for cafeteria services.

Craig, the third low bidder, argues that Automatic Catering, the low bidder, has an unfair competitive advantage because it uses facilities which received Federal and State grants and, further, that it does not qualify as a small business. As to the second low bidder, Craig questions its financial ability to perform the contract.

Regarding the allegation that Automatic Catering has an advantage because of its performance in a facility that receives Federal and State grant funds, we have recognized that a firm may enjoy a competitive advantage

by virtue of its incumbency or own particular circumstances. American Vault Company, Inc., B-198605, September 3, 1980, 80-2 CPD 168. The Government is not obligated to equalize the competitive position of all potential bidders. Tenavision, Inc., B-199485, July 28, 1980, 80-2 CPD 76.

Concerning the allegation that Automatic Catering is not a small business, under 15 U.S.C. § 637(b) (Supp. III, 1979), the Small Business Administration is conclusively empowered to determine matters of small business size status for Federal procurement and sales purposes. Therefore, this Office does not consider size status protests. G.W. Galloway Company, B-207449, June 2, 1982, 82-1 CPD 530.

Finally, regarding the second low bidder and Craig's challenge to its responsibility, our Office does not review protests against affirmative determinations of responsibility unless fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Shufford Mills, Inc., B-206664, March 22, 1982, 82-1 CPD 270. Neither exception has been alleged here.

Accordingly, the protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel