

1007
DECISION



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

FILE: B-190326

DATE: April 18, 1978

**MATTER OF: Tri Rivers Ambulance
Perman Ambulance Service, Inc.,**

DIGEST:

1. Decision by Small Business Administration (SBA) sustaining contracting officer's determination that bidder is nonresponsible because of lack of tenacity or perseverance is not reviewable by GAO since by law SBA decision is "final."
2. Allegation that protester was denied due process because it was not given opportunity to respond to specific complaints regarding its prior performance is not sustained where record indicates protester was aware of complaints and responded to them, and SBA considered protester's position prior to deciding matter.
3. Requirement that bidder have certain personnel and vehicles necessary for contract performance relates to bidder's responsibility and may be satisfied subsequent to bid opening.
4. GAO does not review affirmative determinations of responsibility absent showing of fraud except in circumstances not present here.

Tri Rivers Ambulance and Perman Ambulance Service, Inc. (Perman) respectively protest award to any other bidder under invitation for bids (IFB) No. 646-5-78 issued by the Veterans Administration (VA) Hospital, Pittsburgh, Pennsylvania for ambulance service to VA beneficiaries.

The IFB, a total set-aside for small business concerns, was issued on September 8, 1977, with bid opening on September 27, 1977. Three bids were received. Tri Rivers submitted the low bid with the William J. Ogrcdnik Ambulance Service second low and Perman the highest.

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On September 30, 1977, the contracting officer determined that Tri Rivers was not responsible by reason of persistent failure to apply necessary tenacity or perseverance to do an acceptable job as evidenced by performance as the incumbent contractor for these services. On October 4, 1977, the contracting officer forwarded the contract file on Tri Rivers to the Small Business Administration (SBA). On October 11, 1977, the SBA requested information from Tri Rivers which was furnished by the firm's counsel on October 21, 1977. By letter of November 4, 1977, SBA advised the procuring agency that its decision on nonresponsibility in regard to Tri Rivers was sustained.

Tri Rivers contends that its problems with VA on the prior contract were the result of "negligence and irresponsibility on the part of [VA] employees," not shortcomings on the part of Tri Rivers. It further contends that the VA contracting officer abused his discretion by not advising the protester of the allegations against it and that the SBA then denied Tri Rivers due process by endorsing VA's determination on the basis of these unfounded allegations and without affording Tri Rivers the opportunity to reply to them. Tri Rivers believes that it has been dealt with unjustly by both VA and SBA, and requests that GAO investigate the matter as well as the procedures used by these agencies to determine bidder responsibility.

We find no basis to sustain these protests. The provisions of Public Law 95-89, 91 Stat. 553, 561, approved August 4, 1977, vest in the SBA the authority to make "a final disposition" of questions concerning the responsibility of a small business concern. SBA has considered the matter and has sustained the nonresponsibility determination with regard to Tri Rivers. Under the law, that disposition is "final" and we are therefore precluded from questioning the substance of SBA's conclusion. Moreover, although Tri Rivers alleges that it was denied due process, the record indicates that Tri Rivers (1) was aware of the VA's complaints, (2) knew of the referral to SBA, and (3) responded to SBA with its position regarding those complaints, and that SBA considered the Tri Rivers response prior to reaching its decision. Cf. JBS Construction Company, B-187574, January 31, 1977, 77-1 CPD 79. In any event, it has been recognized that a bidder is not entitled to anything more in the way of due process in a situation such as this. See Decision Sciences Corporation, B-188454, September 21, 1977, 77-2 CPD 188.


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Perman's protest questions the ability of Ogrodnik to provide the service required and makes the point that Ogrodnik's bid should not be considered because Ogrodnik did not have the necessary personnel or vehicles at the date bids were opened.

There is no requirement that a bidder have the personnel or vehicles necessary for contract performance at the time of bid opening. Since such items bear on the bidder's ability to perform the contract and therefore relate to the responsibility of the bidder, the contracting officer need determine only that the bidder will have whatever is necessary for contract performance at the time performance is to begin. See, e.g., 53 Comp. Gen. 36 (1973). In any event, the VA reports that at the time of bid opening, Ogrodnik owned two ambulances that met IFB requirements and subsequently purchased another one. It is further reported that Ogrodnik is certified by the Pennsylvania Department of Health and that attendants are certified and registered with the State.

Moreover, while it is not clear from the record whether the VA has yet made an actual determination of responsibility with regard to Ogrodnik, this Office does not review affirmative determinations of responsibility absent a showing of fraud except in limited circumstances not present here. Edward L. Davis Contracting, Inc., B-190055, September 29, 1977, 77-2 CPD 245 and cases cited therein.

The protests of Tri Rivers and Perman are denied.


Deputy Comptroller General
of the United States