**Comptroller General**
**of the United States**

**Washington, D.C. 20548**

# Decision

**Matter of:** Grants Janitorial and Food Service, Inc.

**File:** B-275157

**Date:** January 27, 1997

Todd W. Smyth, Esq., and Louis P. Herns, Esq., Hood Law Firm, for the protester.
Maj. Robert L. Duecaster, Department of the Army, for the agency.
Stephen K. Simpson, Esq., Assistant Attorney General, Alabama Department of Rehabilitation Services, for the intervenor.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

Under solicitation issued subject to the Randolph-Sheppard Act (establishing priority for the blind in the award of contracts for operation of vending facilities on federal property) which did not require state licensing agency (SLA) for the blind to demonstrate in its offer the extent of its commitment to employing the blind in the performance of the contract, contention that the SLA has not made a firm commitment to ensuring the employment of the blind concerns a matter of contract administration for consideration by the contracting agency and the Department of Education, which is charged with overseeing the SLA's performance and is not for review by the General Accounting Office.

**DECISION**

Grants Janitorial and Food Service, Inc. protests the award of a contract to the Alabama Department of Rehabilitation Services, a state licensing agency (SLA) for the blind, under request for proposals (RFP) No. DABT02-96-R-0002, for food services at Fort McClellan, Alabama. Grants essentially argues that it was improper to apply an award preference to the SLA's offer without considering whether its proposed operating contractor had made a commitment to employ or assist the blind during performance.

We dismiss the protest.

The RFP called for award of a fixed-price requirements contract for a 1-year fiscal year 1997 base period, with four 1-year option periods. The RFP listed seven evaluation factors, in addition to price. It warned offerors that proposals unrealistically low in price would be deemed reflective of a lack of competence or a failure to understand the requirements of the statement of work. It also advised

offerors that the solicitation was subject to the Randolph-Sheppard Act, 20 U.S.C. § 107 (1994), which establishes a priority for the blind in the award of contracts for operation of vending facilities on federal property; that the agency would establish a competitive range; and that, in accordance with the Act, the Army would award a contract to the SLA without further discussions, if it found the SLA's proposal within that competitive range. Otherwise, the agency would select the lowest-priced, technically acceptable proposal for award.

Of the eight proposals submitted, only those from Grants and the SLA were found technically acceptable. Since the SLA offered a lower price than Grants, the proposal clearly came within the competitive range. Federal Acquisition Regulation (FAR) § 15.609 (agencies are to include all proposals with a reasonable chance of award in the competitive range). Accordingly, the Army awarded a contract to the SLA. This protest to our Office followed.

The protester made two initial contentions, both of which it eventually abandoned. The first contention concerned the awardee's failure to comply with FAR § 52.219-15,[1] the applicability of which expired in 1993. FAR § 19.508(f). The second was the allegation that the awardee's price was so low for the option periods as to reflect a failure to understand the requirements. At the request of our Office, the agency provided Grants with a copy of the SLA's proposal, under protective order, to allow the protester an opportunity to identify the precise requirements that appeared understaffed. The protester was unable to identify any.

Grants's remaining contention is that the agency had a duty to ensure that the successful proposal evidenced a firm commitment to assisting the blind before extending the preference to the SLA. As discussed below, we conclude that the agency had no such duty and that the degree to which the SLA utilizes the blind in performance of the contract is a matter of contract administration which we do not review. Bid Protest Regulations, section 21.5(a), 61 Fed. Reg. 39039, 39045 (1996) (to be codified at 4 C.F.R. § 21.5(a)); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228.

The RFP did not require the SLA to describe in its proposal the extent to which the blind would be employed in performance of the contract. Thus there is no legal basis for the protester's contention that the SLA's commitment to assisting the blind should be considered in the evaluation of the SLA's proposal, or that evidence of such a commitment was a prerequisite to application of the award preference to the SLA's proposal. See FAR § 15.608(a); Inner Harbor West Joint Venture, B-249945.3,

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[1]This provision required an offeror certifying itself as an organization for the handicapped to agree that at least 75 percent of the direct labor required in performance of the contract be performed by handicapped individuals.

Mar. 11, 1993, 93-1 CPD ¶ 232. Rather, ensuring that the contract is performed consistent with the purpose of the Randolph-Sheppard Act is a matter of contract administration. In this regard, the regulations addressing the Army's role under the Act specifically provide that it is the responsibility of the on-site official--that is, contract administration personnel such as a contracting officer's representative--to ensure that the operator is licensed by the SLA and that he utilizes sighted employees "only to the extent reasonably necessary." 32 C.F.R. § 260.3(f) (1996). Further, Department of Education regulations provide for review of the SLA's performance and a suspension of the SLA's designation if it fails to comply with the purposes of the Act. 34 C.F.R. § 395.17 (1996). Thus, there are regulatory procedures in place for overseeing the SLA's compliance, and the SLA risks loss of its status if it does not show such compliance. Absent any solicitation provision requiring a specific commitment to assisting the blind, ensuring that the blind benefit from the award of the Fort McClellan contract is solely the responsibility of the agencies concerned with contract administration and oversight of the SLA's performance.

The protest is dismissed.

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