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DECISION



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

[Debarment of Firms For Anti-Trust Violations]

FILE: B-200344

DATE: September 29, 1980

MATTER OF: National Mediation Board

DIGEST:

Debarment of bidders which pled guilty to anti-trust violations involving the submission of bids is within the discretion of procuring agency and not for initial decision by GAO.

[An authorized certifying officer of the National Mediation Board (NMB) requests an advance decision as to whether certain firms which recently pled guilty to criminal violations of federal anti-trust statutes should be debarred.]

[Six firms, including Alderson Reporting Company, Inc. (ARC) and Acme Reporting Company, Inc. (Acme), submitted bids in response to an invitation for bids issued by NMB for stenographic reporting services for fiscal year 1981.] ARC is the apparent low bidder for this requirement. With the exception of Acme, all firms which submitted bids pled guilty to violations of federal anti-trust statutes. Essentially, these violations involved conspiracies to submit noncompetitive bids for the provision of reporting services to the Government. Acme, pointing out that Federal Procurement Regulations (FPR) § 1-1.604(a)(3) authorizes executive agencies to debar a firm for conviction under the federal anti-trust statutes arising out of the submission of bids, requested that NMB debar all other bidders.

[Although our Office has exclusive authority to debar firms for violations of the Davis-Bacon Act, 40 U.S.C. § 276a-2(a) (1976), see Ryel W. Bodily and B&H Contractors, B-196703, May 6, 1980, 80-1 CPD 328, debarment under the federal anti-trust statutes is not for our initial consideration. Rather, the decision to debar for anti-trust

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convictions is within the discretion of the procuring agency. Moreover, the existence of the anti-trust convictions does not necessarily require that the firms be debarred. FPR § 1.1-604(b)(2). We cannot, therefore, determine for NMB whether the firms in question should be debarred. We do note, however, the serious consequences of debarment and emphasize that if NMB does initiate debarment proceedings it must comply with the procedural requirements delineated in FPR § 1-1.604-1.

Since NMB apparently is concerned only with this particular procurement as opposed to future requirements, it may be more appropriate for NMB to consider the convictions in assessing the responsibility of the low bidder, rather than doing so within the context of the more drastic action of debarment. The FPR requires that, to be considered responsible, a firm must have a satisfactory record of integrity and business ethics. FPR § 1-1.1203-1(d). An agency may properly consider anti-trust convictions in making determinations with respect to integrity. Colonial Baking Company, B-185305, July 20, 1976, 76-2 CPD 59. We cannot, however, determine for NMB whether ARC, or any of the other bidders, is responsible, since the question of whether a bidder's lack of integrity is sufficient to warrant a finding of nonresponsibility in a particular procurement is a matter primarily for determination by the procuring agency. 51 Comp. Gen. 703 (1972); Kahn's Bakery, Inc., B-185025, August 2, 1976, 76-2 CPD 106. Of course, when a small business is involved, a nonresponsibility determination must be referred to the Small Business Administration which has conclusive authority to certify that a small business is responsible for a particular procurement. 15 U.S.C. 637 (Supp. I 1977).

Finally, for NMB's guidance on this matter, we point out that our Office recently dismissed in part and denied in part a protest against the award by the United States Tax Court of a reporting contract to ARC. See National Reporting Company, B-199497, August 22, 1980, 80-2 CPD 142.

Milton J. Fowler

For The Comptroller General
of the United States