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DECISION



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

FILE: B-191095

DATE: April 21, 1978

MATTER OF: Southern Industrial Laundry
d/b/a Alabama Laundries and
Linen Supply

DIGEST:

1. Protest that award was made to non-responsible bidder is dismissed since it involves challenge to affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.
2. Protest that awardee is performing unsatisfactorily or is in default and, therefore, the contract should be terminated and reproposed is dismissed since such are matters of contract administration not for resolution pursuant to GAO's bid protest function.
3. Protest that awardee's failure to inspect site where services were to be performed is without merit as referenced IFB paragraph was not mandatory and, in any event, record reflects that visit was made.

The U.S. Army Missile Materiel Readiness Command issued invitation for bid (IFB), DAAH03-77-R0086, for laundry and drycleaning. After amendments not relevant to this protest were issued, the bids were opened on November 23, 1977.

Two bids were received--one by Southern Industrial Laundry d/b/a Alabama Laundries and Linen Supply (Alabama Laundry), the protester, and another by Tennessee Valley Laundry and Dry Cleaners, Inc. (Tennessee Laundry), the awardee. Both bids were responsive to the IFB and Tennessee Laundry was the low bidder.

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After the denial of a protest by the contracting officer, Alabama Laundry filed a protest with our Office. The protest was submitted on three grounds.

First, Alabama Laundry challenged the contracting officer's affirmative determination of responsibility. Alabama Laundry alleges that Tennessee Laundry lacks necessary experience and, therefore, should have been declared nonresponsible. The protester cites section "D," paragraph D-3, Evaluation of Bids, of the IFB which states that "evaluation and award of bids will be made in accordance with Section C, Paragraph C-30 and C-10, and subject to the considerations stated in Paragraph D-1 above." Through the reference to section "D," paragraph D-1, Determination of Responsibility, the protester points to the consideration that should be given to the standards for responsible prospective contractors as set forth in Armed Services Procurement Regulation § 1-900 (1977 ed.) including satisfactory record of previous performance. It is argued that Tennessee Laundry does not meet this standard so as to be nonresponsible and, therefore, an award to Tennessee Laundry should be set aside.

Second, Alabama Laundry alleges that the performance of Tennessee Laundry is unsatisfactory and that the contract should be terminated. The protester bases its protest on the belief that not all items have been delivered and some locations have been partially serviced if serviced at all.

The third allegation states that Tennessee Laundry has violated section "C," paragraph C-31, of the contract by not inspecting the site where services are to be performed.

The protester requests that the contract awarded to Tennessee Laundry be set aside and awarded to Alabama Laundry as the only other party submitting a bid. Alternatively, Alabama Laundry requests that it be allowed to service and be paid under the contract until a determination is made as to whether the awardee is in default.

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The first allegation concerns a challenge to the contracting officer's affirmative determination of responsibility. Our Office has indicated that it would not review protests involving a contracting officer's affirmative determination of responsibility absent allegations or demonstrations of fraud, or failure to meet definitive responsibility criteria. Gillette Industries, Inc., B-189912, August 29, 1977, 77-2 CPD 160. The standards for responsible prospective contractors essentially involve matters of business judgment not readily susceptible to reasoned review. Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, aff'd., 54 Comp. Gen. 715 (1975), 75-1 CPD 138. Since there has been no allegation of fraud or any action by a procuring official tantamount to fraud, this Office normally will not review the affirmative determination of responsibility on this basis.

This general policy of not reviewing affirmative determinations of responsibility is not applicable where there is definitive criterion of responsibility contained in the solicitation. Definitive criteria of responsibility exists when requirements are developed and placed in the solicitation to reflect the minimum standards necessary for the job. See M&M Welding and Fabricators, Inc., B-187573, January 17, 1977, 77-1 CPD 35. In Haughton Elevator Division, Reliance Electric Company, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294, our Office stated that:

"* * * definitive criteria of responsibility, which the agency has determined necessary by placing them in the solicitation, should be read as outlining a minimum standard of experience or expertise which is a prerequisite to an affirmative determination of responsibility."

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Alabama Laundry's protest on the issue of responsibility is based on section "D," paragraph D-1. We find nothing in that provision which can qualify as definitive criteria for a determination of responsibility. At best, that provision provides general guidelines and factors to be considered by the contracting officer. The provision merely provides that "due consideration" be given to these factors which are included as being illustrative of the many factors which may be considered. Nothing in the provision suggests that a failure to meet one factor will make the bidder nonresponsible.

Since the protest concerning the responsibility of Tennessee Laundry is based essentially on what must be the contracting officer's subjective judgment, rather than any allegation of fraud or noncompliance with definitive responsibility criteria, we will not consider the matter further.

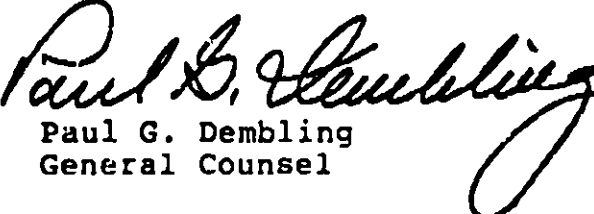
The second allegation concerns the possibility of unsatisfactory performance of the subject contract by the awardee. The question of whether a contractor is properly performing the contract is a matter of contract administration which is the function and responsibility of the procuring activity. Matters of contract administration are not for resolution under our Bid Protest Procedures, 4 C.F.R. § 20 (1977), which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. Fechheimer Brothers Company, B-188651, September 21, 1977, 77-2 CPD 210; SMI (Watertown), Inc., B-188174, February 8, 1977, 77-1 CPD 98.

In this regard, the protester raises the possibility of the awardee being in default. Whether the Government should terminate a contract for default and reprocur against the contractor's account are also matters of contract administration which are the function and responsibility of the contracting agency and not for resolution pursuant to GAO's bid protest function. H.G. Peters & Company, Inc., B-183115, March 22, 1976, 76-1 CPD 190; National Flooring Company, B-183844, July 31, 1975, 75-2 CPD 71.

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Concerning Alabama Laundry's third allegation that Tennessee Laundry did not inspect the site where services were to be performed, contrary to section "C," paragraph C-31. the record indicates that Tennessee Laundry did in fact inspect the site. However, more importantly, paragraph C-31 speaks in terms of guidance to a prospective contractor and was not mandatory in nature. Therefore, noncompliance with its terms would not affect a bidder's eligibility for award.

For the reasons stated herein, the protest is dismissed.


Paul G. Dembling
General Counsel