



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

40151

B-179182

October 30, 1973

Rawson, Galan, Madox, Boyer & Gulik, P.A.  
Attorneys at Law  
320 East Adams Street  
Jacksonville, Florida 32202

Attention: Tyrice A. Boyer, Enquire

Gentlemen:

Reference is made to your letter of July 11, 1973, with enclosures, protesting on behalf of Garbage Collection, Incorporated, the award to any other bidder of two bid items of IFB W62467-73-C-5708, issued by Naval Facilities Engineering Command on April 19, 1973, for refuse collection and disposal at Naval Air Station, Cecil Field, Florida. For the reasons stated below, the protest is denied.

Bids were opened May 31, 1973, and Garbage Collection, Incorporated, was low bidder on items 1 and 4 of the invitation schedule. However, the officer in charge of construction informed you that the bidder was found to be nonresponsible because it lacked a satisfactory record of integrity. Specifically, it is reported that the president of Garbage Collection, Incorporated, is under indictment for violation of 18 U.S.C. 1001 for an attempt to rig the bids on a similar contract at Naval Air Station, Jacksonville, in June 1972.

By letter of July 11, 1973, you protested the determination that Garbage Collection, Incorporated, is nonresponsible. You claim that the Naval Facilities Engineering Command failed to follow its own IFB specifications in that it did not award bid items 1 and 4 to the low bidder. You allege that a finding of nonresponsibility based on the indictment of the firm's president is arbitrary. You argue that the contracting officer's action prejudices the case against the firm's president and goes against the principle that an individual is innocent until proven guilty. You accordingly request that bid items 1 and 4 be awarded to the low bidder according to the solicitation.

[Protest Against Navy Determination of Nonresponsibility]

778445-091812

B-179182

As a general rule, this Office will not interfere with a contracting officer's determination of nonresponsibility unless it is shown by convincing evidence that the determination is arbitrary, capricious, or not based on substantial evidence. Comp. Gen. 4, 7 (1965).

With respect to the determination made in this case, the Services Procurement Regulation (ASPR) 1-903.1 provides that a contractor found responsible "a prospective contractor must have a satisfactory record of integrity." While we have stated that mere suspicion or allegations by private parties, such as other bidders, may not be sufficient evidence to require a finding of nonresponsibility (B-174843, May 16, 1972), the indictment of a corporation's president for an offense enumerated in ASPR 1-605.1 as a cause for suspension of bidders has been held to constitute an adequate basis for a determination of nonresponsibility. See B-152840, February 20, 1968, and 51 Comp. Gen. 703, 708 (1971). Pursuant to ASPR 1-605.1, suspicion, upon adequate evidence of the commission of fraud or a criminal offense as an incident to obtaining or attempting to obtain a public contract, is cause for suspending bidders. It is noted, in this connection, that adequate evidence for suspension does not require the kind of showing necessary for a successful criminal prosecution or a formal debarment, but may be likened to the probable cause necessary for an arrest, a search warrant, or a preliminary hearing. See Horne Brothers, Inc. v. Laird, 463 F.2d 1268, 1271 (1972). Clearly, the indictment of Garbage Collection's president for "rigging bids" is sufficient cause to support the contracting officer's determination of nonresponsibility.

As to your argument that such a determination of nonresponsibility is a violation of the constitutional right of presumption of innocence, it should be noted that the procuring agency's determination of nonresponsibility does not affect the outcome of the pending trial on the question of guilt or innocence. The nonresponsibility determination does mean that the procuring agency has substantial doubt as to your client's integrity, which it can not dispel. However, it does not mean that there is positive proof the individual has committed a crime.

Finally, we have noted that, pursuant to ASPR 1-705.4, the Small Business Administration (SBA) concurred with the contracting

B-179182

officer's determination of nonresponsibility. We believe the GBA's concurrence lends further support to the propriety of the contracting officer's finding of nonresponsibility.

Accordingly, the protest is denied.

Sincerely yours,

Paul G. Dawbling

For the Comptroller General  
of the United States