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MARCO EDWARDS

P.L. # 2-

DECISION



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

FILE: B-187053(1)

DATE: November 19, 1976

MATTER OF: What-Mac Contractors, Inc.; Chemical Technology, Inc.

DIGEST:

1. Solicitation provision referring to 12-month period of performance does not preclude contract award for less than 12-month period where separate provision specifically defining period of performance may be read compatibly with cited provision as establishing a period of performance of 12 months or less, depending on the date of award. Moreover, Standard Form 33A allows Government to accept less than 12-month quantity at the monthly unit price solicited.
2. Protest against award prior to resolution of protest under ASPR § 2-407.8(b)(3)(iii) is denied in absence of evidence of error in contracting officer's determination that prompt award will be advantageous to Government.

What-Mac Contractors, Inc. and Chemical Technology, Inc. have protested the September 3, 1976 award of a guard service contract under IFB No. DABT-76-B-0035 to Transco Security Services, Inc., for only a 9-month term on the ground that Section E of the solicitation does not permit an award for less than a 12-month term. The protesters seek termination of the instant contract and a resolicitation.

Section E of the instant solicitation, entitled "Supplies/ Services and Prices," requests 12-month pricing data, both unit and total, following a brief description of the contract work which states:

"Furnish Protective Guard Service to include installation security at Fort Rucker, Alabama necessary to provide full and complete protective service in accordance with Part II,

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Section F, Specifications, including vehicles for 12 months." (Emphasis added.)

The protesters contend that this provision fixes the contract period of performance at exactly 12 months.

The Department of the Army argues that it is unreasonable to interpret Section E as contended, in view of Section H, which states:

"H1. Period of Performance: The Contractor will perform the work called for herein during the period of performance of this contract beginning 1 July 1976 or date of award, whichever is later, through 30 June 1977."

The Army cites Hoi-Gar Manufacturing Corp. v. United States, 351 F. 2d 972, 979 (Ct. Cl. 1965), in which the court stated:

"* * * an interpretation which gives a reasonable meaning to all parts of an instrument will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless or superfluous; nor should any provision be construed as being in conflict with another unless no other reasonable interpretation is possible."

In the instant case, acceptance of the protesters' position as to the meaning of Section E requires us to ignore the unambiguous language of Section H which states "* * * or date of award, whichever is later, through 30 June 1977." The two provisions may be read together as establishing a performance period of up to 12 months, depending on the date of award.

Furthermore, if either of the two cited provisions must predominate in resolving any inconsistencies between the two sections as to the contract period of performance, it must be the specific, direct language of Section H which is controlling:

"If the apparent inconsistency is between a clause that is generally and broadly inclusive in character and one that is

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more limited and specific in its coverage, the latter should generally be held to operate as a modification and pro tanto nullification of the former." 3 Corbin, Contracts § 547 (1960); Texaco, Inc. v. Holsinger, 336 F. 2d 230, 235 (10th Cir. 1964), cert den. 379 U.S. 970 (1965).

Furthermore, section 10(c) of Standard Form 33A, page 9 of the solicitation, provides in pertinent part:

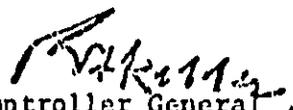
"* * * THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER."

Under the quoted provision the Government could accept less than the total 12-month quantity at the monthly unit price solicited.

Chemical Technology, Inc. objects to the award of the instant contract during the pendency of its protest in our Office. In this regard, Armed Services Procurement Regulation § 2-407.8(b) (3)(iii) (1975 ed.), pursuant to which the instant award was made, permits the Government to make an award prior to resolution of a protest where the contracting officer determines that a prompt award will be advantageous to the Government. The protester has produced no evidence to show that determination to have been in error.

Finally, Chemical Technology protests the decision to make award while the question of Transco's size is before the Small Business Administration's Size Appeals Board in connection with an appeal filed by Sentinel Protective Services, Inc. ASPR 1-703(b) (3)(iv) provides that procurement action need not be suspended when an appeal is lodged with the Size Appeals Board when the contracting officer determines in writing that award must be made without delay to protect the public interest. Our file contains a copy of that written determination. Accordingly, we see no basis for objecting to the award on this basis.

The protest is denied.


Deputy Comptroller General
of the United States