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Boyle

DECISION



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

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FILE: B-205593.3

DATE: March 1, 1982

MATTER OF: Environmental Laboratory of Fayetteville,
Inc.--Reconsideration

DIGEST:

Prior decision is affirmed because the protester has not shown any errors of law or fact in the decision's dismissal of its protest against the contracting officer's affirmative determination of the low bidder's responsibility.

Environmental Laboratory of Fayetteville, Inc. (Environmental), requests reconsideration of our decision in the matter of Environmental Laboratory of Fayetteville, Inc.--Reconsideration, B-205593.2, January 13, 1982, 82-1 CPD , which affirmed our decision in the matter of Environmental Laboratory of Fayetteville, Inc., B-205593, December 7, 1981, 81-2 CPD 445.

The December 7, 1981, decision dismissed Environmental's protest against the procuring agency's affirmative determination of the low bidder's responsibility. The January 13, 1982, decision affirmed the December 7 decision, finding that (1) the contracting officer did not change the time of performance requirements stated in the IFB, (2) decisions cited by Environmental dealing with negative responsibility determinations were inapplicable to the instant affirmative determination of responsibility situation, (3) the awardee, Law and Company, Inc. (Law), could acquire new facilities after award, and (4) the contracting officer's signing of the contract constituted an affirmative determination of responsibility. Environmental disagrees with all findings. After considering Environmental's reasons for disagreement, we affirm the January 13, 1982, decision.

Regarding the first finding, Environmental contends that although the contract has not been expressly modified, Environmental's employees have observed Law's employees picking up samples prior to the time of day set forth in the IFB. Environmental notes that, during the prior

2 years when Environmental performed this work for the Army, Environmental was permitted to change the pickup times only under unavoidable circumstances. Protests, like this one, alleging that the awardee is not performing in conformance with the contract requirements concern matters of contract administration, which are the responsibility of the contracting agency and which are not considered under our bid protest function. Maxton Lock Company, Inc., B-200469, February 4, 1981, 81-1 CPD 66.

Concerning the second finding, Environmental contends, citing several of our decisions rendered prior to 1971, that the Army should have required proof that Law could perform as required by the IFB. This contention concerns the Army's determination that Law has the general capability to perform in the time required, which, as stated in the January 13, 1982, decision is the type of affirmative determination of responsibility no longer reviewed by our Office.

Next, Environmental agrees that Law is required to perform as provided in the IFB and that Law can obtain additional facilities or certifications after award. However, pointing to a decision of our Office, Environmental indicates that, in the circumstances of that decision, the awardee was required to have all necessary certifications prior to award. That decision is inapplicable for the reasons discussed in the January 13 decision. Here, as Environmental recognizes, Law is not prohibited from obtaining additional facilities or certifications after award if it so desires. Further, the Army determined that Law could perform as required, which meant that, in the Army's view, Law had the necessary facilities and certifications prior to award to perform as required.

Environmental also argues that, in this type of work, the contracting officer's signing of the contract should not be considered an affirmative determination of responsibility. As pointed out in the January 13, 1982, decision, we have held that the contracting officer's signing of the contract constitutes an affirmative determination of responsibility and no reason has been advanced which persuades us to change this holding.

Finally, Environmental argues that the pickup time and reporting time as set out in the IFB constitute definitive criteria of responsibility. In our view, the IFB provisions are merely part of the general specifications concerning performance and they do not establish a precondition to award. See, e.g., Johnson Controls, Inc., B-200466, February 20, 1981, 81-1 CPD 120.

Accordingly, since Environmental has not shown any errors of law or fact and has not presented any new evidence warranting modification or reversal of the prior decision, the January 13, 1982, decision is affirmed.

for 
Comptroller General
of the United States