

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

E-176849 (2)

JAN 2 1973

Dear Mr. Secretary:

Reference is made to a letter dated September 15, 1972, from the Counsel for the Naval Facilities Engineering Command, forwarding a report in connection with a protest by Advance Building Maintenance Company (Advance) against the award of a contract to Nationwide Building Maintenance, Inc. (Nationwide), under Invitation for Bids (IFB) N62477-72-C-0586, issued by the Naval Facilities Engineering Command, Washington, D.C.

Enclosed is a copy of our decision of today to Advance, denying its protest.

Your attention is invited to the fact that ASPR 2-407.8(b)(2) requires notice to be given to the Comptroller General of intent to make an award prior to the final disposition of a protest by this Office. We have no record of such notice having been given in the present case. In addition, the report of September 15 does not indicate that approval to make the award was obtained from an appropriate level above the contracting officer as required by that regulation. Counsel for the Naval Facilities Engineering Command states that because the then-current contract was due to expire on August 31, 1972, and it was considered necessary that the services be continued without interruption, award was made to Nationwide on August 31, 1972. No explanation was given as to why an extension of the then-current contract could not have been obtained.

In this connection, the protester has stated:

"Equally unlawful, and just as clearly an abuse of discretion, was the Navy's decision to award a contract to Nationwide notwithstanding the pendency of this protest. The Navy attempts to justify this award by claiming that continued performance of important services was needed beyond the August 31, 1972, expiration of the then-current contract. The Navy does not state, however,

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OFFICE OF THE COMPTROLLER GENERAL OF THE UNITED STATES

B-176849

that it negotiated with the then-current contractor for an extension of its contract, and that the then-current contractor had agreed to such an extension at its old contract price. In fact, until late in the afternoon of August 31, 1972, the then-current contractor believed that its contract would be extended. Accordingly, the Navy's justification for issuing the award to Nationwide before resolution of this protest is spurious, and the issuance of that award was an abuse of discretion."

While the procuring activity's failure to follow the provisions of ASPR 2-407.8(b)(2) is regarded, in this case, as a procedural defect, not affecting the legality of the award, we recommend that appropriate action be taken to insure that the requirements of the regulation are adhered to in future cases.

Also, it should be noted that our conclusion in the decision to Advance, that dual signatures on the Affidavit of Individual Surety (Standard Form 28) render the affidavit ineffective for the principal purpose intended by the form, will require a change in the Naval Facilities Engineering Command's indicated current practice of accepting such affidavits at half the stated value in determining whether the individual surety's net worth is sufficient to cover the bond.

We would appreciate advice of the action taken in connection with the above matters.

The file transmitted with the letter of September 15, 1972, is returned.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosures

The Honorable
The Secretary of the Navy