



COMPTROLLER GENERAL OF THE UNITED STATES

Washington, D.C. 20548

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D-178747

July 16, 1973

AIRMAIL

Haas & Kajarian
Attorneys at Law
451 Jackson Street
San Francisco, California 94111

Attention: Louis H. Haas, Esq.

Gentlemen:

This is in reply to your letter of May 23, 1973, protesting on behalf of Super Building Maintenance (SMB) an award to any other bidder under Invitation for Bids No. 2-20093(JE-2), issued by USA's Ames Research Center, Moffett Field, California, for janitorial services.

USA wishes to proceed with award to the low bidder, Action Industries (Action), and has suggested that your protest is untimely filed.

Under applicable standards protests must be filed not later than 5 working days after the basis for protest is known or should have been known, whichever is earlier. If a protest is filed initially with the contracting agency, any subsequent protest to this Office filed (received here) within 5 working days of notification of adverse agency action will be considered provided the initial protest to the agency was made timely. 4 CFR 20.2(a).

You have protested any award to Action on the grounds that it failed to meet the solicitation's experience requirement and that its bid was untimely.

We have been informally advised that Action's bid was received via certified mail on April 24, 1973, one day after bid opening, and that the procuring activity ascertained from the Postal Service that the bid was mailed in sufficient time for receipt by bid opening. Thereafter, a second bid opening was held on April 27, 1973.

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SEM's representative attended and was provided an opportunity to review Action's bid.

In our opinion SEM should have been aware on April 27 that IASA considered Action's bid as coming within the exception permitting consideration for award of a late mailed bid, since late bids which are not so considered must be held unopened. SEM's initial protest to IASA, by letter of May 9, was more than 5 working days after April 27, and therefore was untimely on this issue. Accordingly, we will take no further action on this point.

You also contend that Action's bid must be rejected because of the firm's failure to meet the experience criteria set out in paragraph 4 of the solicitation ("Bidder's Qualifications"), which provides, in pertinent part, as follows:

Bidder's past experience must show evidence of at least one year of previous successful performance of services similar to the Custodial and Janitorial Services specified herein.

You allege that Action has never actually engaged in the performance of janitorial services although it has had prior experience in writing specifications, and inspecting a contract for janitorial services at the Los Angeles Air Force Station. We do not have a detailed explanation regarding IASA's evaluation of Action's experience and qualifications. However, Action has been found qualified for award.

We have consistently stated that determinations of responsibility are primarily the function of the procuring agencies, and will not be questioned unless found to be arbitrary, in bad faith, or otherwise unreasonable. Moreover, it is our position that the bids of responsible bidders may not be rejected merely for failure to meet the literal experience requirements of a solicitation. 45 Comp. Gen. 4 (1955). In the circumstances and since competition does not seem to have been adversely affected, we find no basis for objecting to IASA's determination that the low bidder is qualified to perform the contract.

For the reasons stated, we will take no further action in the matter. Nevertheless, we are concerned with the possibility that prospective contractors may be deterred from bidding by literal acceptance of solicitation provisions which are not to be literally applied. We are, therefore, recommending that care be taken to insure against such situations in future IASA procurements.

Sincerely yours,

Paul G. Donahoe

For the Comptroller General
 of the United States