



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

09/660

B-178852

August 30, 1973

Seal Bond, Inc.
3635 Lemmon Avenue, Suite 411
Dallas, Texas 75219

Attention: Mr. Wilburn W. Seal

Gentlemen:

Reference is made to your letter of August 2, 1973, and prior correspondence, protesting against the award of a contract to Wheeler Brothers, Inc., under Department of the Air Force request for proposals (RFP) No. F64719-73-R-0094, issued by the Clark Air Force Base, Republic of the Philippines.

RFP -0094 requested offers for the operation of contractor-operated, on-base automotive parts stores (COFARS) for installations at Clark Air Force Base and Subic Naval Air Station, Republic of the Philippines, and U-TAPO Air Base, Thailand. Offerors were requested to submit separate quotations for the initial fiscal year ('74) and each of the two following 1-year option fiscal years ('75 and '76). Solicitation provision D-9 stated that amounts proposed for the option periods would not be factors evaluated for award of the contract. Solicitation provision D-10, as amended, required each offeror to submit for " * * * evaluating a prospective contractor's responsibility and his ability to provide the required supplies and services" a plan for assumption of COFARS responsibility.

Proposals were received from six firms. The lowest proposal in the amount of \$2,993,000 was submitted by Wheeler Brothers, Inc. The second lowest proposal in the amount of \$3,151,000 was submitted by Worldwide Parts and Supply. The third lowest proposal in the amount of \$3,199,000 was submitted by your firm.

On May 29, 1973, the contracting officer requested the Defense Contract Administration Services District (DCASD), Pittsburgh, to conduct a preaward survey of the plant and facilities of Wheeler Brothers, Inc. On June 4, 1973, the preaward survey monitor advised the contracting officer that the survey had been completed and that an award to Wheeler Brothers was recommended. The contract was awarded to Wheeler Brothers the following day, June 5, 1973. By telefax of June 7, 1973, and subsequent correspondence, you protested the award to our Office.

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You contend that the Air Force did not provide DCASD with sufficient information to conduct an adequate preaward survey. You state that this is substantiated by the fact that Wheeler Brothers is not meeting contract requirements after the award of the contract. However, the record indicates that the preaward survey team made an independent review of the offeror's ability to perform the contract. The preaward survey report concluded that the offeror had trained and experienced personnel that would be able to operate the system and warehousing and other facilities to support the base store requirements.

Further, you have contended that Wheeler Brothers did not submit with its offer an adequate plan for COPARS responsibility. However, as indicated above, the plan was to be provided for the purpose of determining the offeror's responsibility. Information regarding responsibility can be furnished by an offeror after the submission of offers despite any language to the contrary in the solicitation. 51 Comp. Gen. 168, 172 (1971). In this case, DCASD obtained additional information from Wheeler Brothers during the preaward survey regarding its plan for COPARS responsibility and determined that the offeror had a realistic plan to perform the contract.

We have held consistently that it is the duty of the contracting officer to determine the responsibility of a prospective contractor. In making the determination, the contracting officer is vested with a considerable degree of discretion. We will not substitute our judgment in such cases and will uphold the contracting officer's determination of responsibility unless it is shown to be arbitrary, capricious, or not supported by substantial evidence. B-176103, August 24, 1972; B-175611, July 25, 1972; B-172978, January 27, 1972; 51 Comp. Gen. 233. In the circumstances of the immediate case, the determination that Wheeler Brothers is a responsible prospective contractor is based upon the preaward survey and we are therefore unable to conclude that the contracting officer was without a reasonable basis for the conclusion. Further, the fact that a contractor subsequently does not comply with the contract requirements does not affect the validity of the contract award. Thus, if Wheeler Brothers is not performing in accordance with contract requirements, that would not have a retroactive effect upon the award.

You have contended also that the Air Force should not have solicited offers beyond fiscal year '74 because the authority for the COPARS system expires June 30, 1974, under present DOD policy. You therefore recommend that the solicitation upon which the award was made be canceled. However, the fact that the Air Force has obtained option offers for fiscal years '75 and '76 is no indication that such options will be exercised. In that connection, we note that the offerors were free to offer different quotations for the option years than the initial year of performance and that

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the option offers were not a part of the evaluation for award of the contract. Therefore, it is not apparent that any offeror was prejudiced by the solicitation of option offers. Further, there is nothing in the record to indicate that the options will be exercised if it is not appropriate to do so. Cancellation of the procurement is not required in the circumstances.

Accordingly, your protest is denied.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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