

**DECISION**

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

**FILE:** B-214233**DATE:** September 24, 1985**MATTER OF:** Rowe Contracting Service, Inc.**DIGEST:**

Award of contract to offeror not possessing Top Secret facility security clearance required by solicitation was improper.

Rowe Contracting Service, Inc., protests the award of a contract to Drytech Incorporated under request for proposals (RFP) No. DAJA-37-84-R-0006, issued by the Department of the Army for custodial services at Gablingen Kaserne in Augsburg, West Germany. Among other things, Rowe alleges that the Army erroneously awarded the contract to Drytech because it lacked the Top Secret facility security clearance required by the RFP.

Under the solicitation, the Army requested proposals for performing custodial services in certain classified or restricted areas at Gablingen Kaserne. The RFP, as issued, required all employees working in such areas to possess a Top Secret/Special Intelligence security clearance and to be eligible for special intelligence indoctrination. In response to an inquiry from Rowe, the then-incumbent contractor, the Army subsequently amended the solicitation to also require that the contractor itself possess a Top Secret facility security clearance.

The Army received two offers in response to the RFP. Drytech submitted the low offer, while Rowe submitted the second low offer. Although Drytech lacked the Top Secret facility security clearance required under the solicitation, a fact brought to the attention of the Army by Rowe prior to award, the Army nevertheless made award to Drytech. Rowe thereupon filed this protest with our Office.

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Rowe alleges that award to Drytech was improper because, among other reasons, Drytech lacked the required facility security clearance.

Contracting officials indicate that the requirement for a Top Secret facility security clearance was added to the solicitation to enable the successful offeror's employees to obtain the required Top Secret/Special Intelligence security clearances, explaining that a contractor must first obtain a facility clearance before its employees will be granted individual security clearances under the defense industrial security process. However, the preaward survey revealed that Drytech's employees already possessed the necessary clearances and the contracting officer therefore saw no need for Drytech itself to have a facility clearance.

Although the Army views the contracting officer's actions as understandable under the circumstances, nevertheless, it admits that it was improper for the contracting officer to have ignored the facility clearance requirement. On this basis, we sustain the protest.

While the Army and the protester agreed that the award to Drytech was improper, they did not reach agreement about the appropriate remedy. The Army reports that contracting officials, acting upon a recommendation from Army legal personnel, approached Rowe regarding Rowe's willingness to accept a contract for the remainder of the initial contract period, if the improperly awarded contract with Drytech was terminated for the convenience of the government. However, according to the Army, Rowe responded to the Army's inquiry by attempting to set its own terms as to the length of the contract and the monthly price. Rowe, on the other hand, argued that the Army never asked it to perform at the price offered in its initial proposal and explained the higher prices subsequently quoted as resulting from assurances from contracting officials in Germany that "we don't care what your price is, we want to make it up to you."

The record in this regard consists of memoranda of telephone conversations (the accuracy of which the parties dispute), exchanges of correspondence between the Army and Rowe, and statements submitted by both in which each questions the good faith and veracity of the other. Whatever the merits of this dispute, it is clear that the majority

of the contract had been performed before Rowe unambiguously expressed its willingness to perform the remainder of it at the price it initially proposed, and performance of the contract is now complete. Therefore, corrective action is not feasible with respect to this contract.

*for* *Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel