



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rowe Contracting Service, Inc.

File: B-228647

Date: October 29, 1987

DIGEST

1. Decision as to whether a prospective contractor is responsible is within the discretion of the contracting officer, and the General Accounting Office will not review an affirmative determination except in limited circumstances.
2. Where a solicitation contains a general licensing requirement, the contracting officer may make the award without regard to whether the bidder possesses the licenses.
3. Offeror who has another contract with the government but is not a government employee is not subject to regulation prohibiting award of contracts to government employees.

DECISION

Rowe Contracting Service, Inc. protests the proposed award of a contract to Drytech, Inc. under request for proposals (RFP) No. DAJA-37-87-R-0435 issued by the Army Contracting Center, Europe, for custodial services at the Berlin Field Station. Rowe, the incumbent contractor, contends that government representatives improperly gave Drytech assistance during the procurement process, that Drytech's offer does not comply with all the RFP requirements and that Drytech is ineligible for award because its owner is a government employee.

We deny the protest.

Rowe charges that shortly after the closing date for initial proposals, Mr. Dryburgh, the owner of Drytech, contacted Rowe's supervisor and attempted to solicit the names and phone numbers of Rowe's current employees. Rowe alleges that Mr. Dryburgh received the supervisor's name and phone number, as well as the name and phone number of another Rowe employee, all of which was alleged confidential information in Rowe's offer, from the contracting officer's representative (COR). Rowe further charges that the COR

040413

himself attempted to solicit Rowe employees to work on the new contract with Drytech. Finally, Rowe complains that another Army officer posted notices seeking employees for Drytech.

The Army denies any improper actions by its employees. It states that what Rowe charges were attempts to recruit employees for Drytech were merely efforts to establish the availability of workers in the event of a change in contractors and to inform other soldiers seeking off-duty employment. In addition, the Army has furnished sworn statements from both parties denying the allegations made against them.

We have reviewed the record and find that it supports the Army's position that no improper action occurred. For example, we believe that it is reasonable that the COR would want to assure the availability of adequate personnel in the event of a change in contractors, as well as to present potential work opportunities for off duty personnel that might be interested. In this connection we note that the record suggests that at least a large portion of Rowe's employees were in fact off duty military personnel that would clearly be interested in future employment if a change in contractors occurred. Such activity does not require disclosure of the names of other offerors, nor does it suggest an attempt to solicit employees for another contractor. If anything, it suggests a proper interest in future contract performance and an interest in the welfare of military personnel that might need or want additional income.

Moreover, while the Army did not specifically refute Rowe's allegation that the COR provided Drytech with the names and phone numbers of two of Rowe's employees, Mr. Dryburgh states that Rowe's supervisor's name is common knowledge. We find it not unreasonable that another firm could independently discover this information. A mere suspicion of wrongdoing, without anything more, fails to satisfy the protester's burden of proof on an allegation of improper conduct on the part of government officials. Monarch Engineering Co., B-218374, June 21, 1985, 85-1 C.P.D. ¶ 709.

Rowe also contends that Drytech did not have the work force needed to perform the contract and therefore is not a responsible prospective contractor. Rowe cites Section K-10 of the solicitation, which asks offerors to designate personnel to be used in contract performance who are available for interview prior to award of the contract. A preaward survey concluded that qualified personnel were available for the contract, and the contracting officer determined that Drytech was a responsible contractor. Our

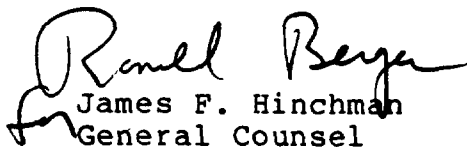
Office will not review an affirmative determination of a prospective contractor's responsibility absent a showing of possible fraud or bad faith on the part of contracting officials, or an allegation of the misapplication of definitive responsibility criteria that were contained in the solicitation. Sylvan Service Corp., B-219077, June 17, 1985, 85-1 C.P.D. ¶ 694. Rowe's allegation does not fall within any of these exceptions.

Rowe further charges that Drytech does not have the licenses and permits required by the solicitation. Where a solicitation contains a general licensing requirement--i.e., a requirement that the contractor have all applicable licenses--without requiring specific licenses, the contracting officer properly may make the award without regard to whether the bidder possesses the licenses at the time of award. Compliance with general licensing requirements therefore is a matter to be resolved by the contractor and the local authorities. Central Virginia Ambulance Service, Inc., B-225530, Dec. 5, 1986, 86-2 C.P.D. ¶ 651.

The solicitation here contained a provision that stated in essence that by submitting an offer the contractor warrants (among other things) that it has obtained all necessary licenses and permits required in connection with the contract. We interpret this as a general licensing requirement only. Thus, the fact that Drytech may not possess these licenses at the time of award is not a proper basis for denying it the contract. If the contractor is ultimately unable to obtain the licenses that are necessary to performance of the contract, it faces the risk of default and termination.

Finally, Rowe states that the owner of Drytech is employed by the Army and therefore Drytech is ineligible for award under the Federal Acquisition Regulation, 48 C.F.R. § 3.601 (1986), which prohibits an award to a government employee or to a business concern or other organization owned or substantially owned or controlled by a government employee. The Army reports, however, that Mr. Dryburgh is an independent contractor performing other work for the Army, not a government employee.

The protest is denied.


James F. Hinchman
General Counsel