



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

B-176342

JAN 8 1973

R. R. Allen, Incorporated
Post Office Box 1186
Chesapeake, Virginia 23320

Attention: Mr. E. B. Allen
Vice President

Gentlemen:

Further reference is made to your telegram dated June 26, 1972, and subsequent correspondence, protesting against the award of a contract to any other firm under invitation for bids No. W52673-72-B-77, issued by the Supervisor of Shipbuilding, Conversion and Repair, Sixth Naval District, Charleston, South Carolina.

The invitation was issued on May 16, 1972, for the regular over-haul of a medium harbor tug. Three bids were received and opened on May 26, 1972, and your firm submitted the low bid. Your bid of \$99,999.99 was rejected because your firm was determined to be non-responsible based upon a preaward survey concluding that the facilities leased by you and designated as the facilities where the work would be performed (1) lacked the necessary electrical current required to furnish 400 amps and shore power 24 hours of every day the harbor tug was in your possession, as required in the specifications, (2) contained a pier considered unsafe in that it had no safety rails, lacked adequate lighting and was in a deteriorated condition, and (3) had unsatisfactory garbage and sewage disposal, as evidenced by the ejection of raw sewage into the Wando River. Therefore, award was made to the next low bidder on June 22, 1972, at a price of \$119,000.

You contend that the preaward survey was highly irregular as it was conducted unannounced and unattended by any officials of your firm and because you were not advised of the results thereof until after award of the contract. You also state that you are unaware of the reasons the facilities at the Wando, South Carolina, plant were considered unacceptable and, assuming that they were deficient, upon adequate notice the deficiencies could have been corrected. In addition, you contend that your firm has the necessary organization, experience and technical skills, and that your bid listed several reputable subcontractors who are available to accomplish any repairs not within your in-house capability.

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Furthermore, you point out that during the past ten years your firm has satisfactorily accomplished repairs on every tug of similar characteristics operating in the Fifth Naval District.

The administrative report states that the contracting officer's determination that you were a nonresponsible bidder on this procurement was made pursuant to Armed Services Procurement Regulation (ASPR) 1-904.1, which requires that whenever the contracting officer is unable to make an affirmative determination that a prospective contractor is responsible within the meaning of ASPR 1-902, "a determination of non-responsibility shall be made, signed, and placed in the files."

The determination of nonresponsibility shows that a preaward survey made on your leased facilities in connection with a prior contract, completed in May of 1972, noted certain deficiencies. Since that contract involved the first overhaul of a tug at those facilities and you agreed to correct the deficiencies, you received the award. However, it is reported that the deficiencies which you had agreed to cure during the course of performance under that contract were not corrected. For example, it is reported that you represented that you would manufacture a rectifier which would convert alternating current to direct current and provide the required electrical power of 400 amps, but that this was not accomplished at any time during that overhaul contract. Also, it is reported that you had stated that you would hook up a cement septic tank and stop the practice of dumping raw sewage into the Wando River, but at the time of this preaward survey no such corrective action had been taken. Further, while attempts had been made to reinforce the pier during the previous overhaul contract by placing plywood sheathing down the center, such action was not considered sufficient to make the pier safe. In view of the continued existence of these deficiencies, the preaward survey under the subject procurement was negative and the nonresponsibility determination was made.

Because ASPR 1-705.4(c) requires referral to the Small Business Administration (SBA) where a bid from a small business concern is to be rejected because of a contracting officer's determination of non-responsibility as to capacity, the matter was discussed with the appropriate SBA Office. The SBA advised that it would not be able to make a determination prior to June 30, 1972, since it needed a full 15 working days to make its determination. Due to the urgency of the procurement (the tug was completely inoperative and was needed to handle polaris submarines), the contracting officer determined that it was necessary to make an award without delay.

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In this regard, ASPR 1-705.4(c)(iv) provides as follows:

"A referral need not be made to the SBA if the contracting officer certifies in writing, and his certificate is approved by the chief of the purchasing office, that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to the SBA * * *."

Since the contracting officer complied with the above-cited subsection, we find no basis to question the nonreferral to SBA. See B-163967, September 26, 1968.

The determination of a bidder's responsibility is a question of fact to be determined by the contracting officer and necessarily involves the exercise of a considerable range of discretion. Where the information relied upon by the contracting officer in making a determination of nonresponsibility reasonably supports that determination, there is no basis for our Office to substitute its judgment for that of the contracting officer. 45 Comp. Gen. 4 (1965). It is our view that the record in the instant case reasonably supports the contracting officer's determination.

Accordingly, your protest is denied.

Very truly yours,

R.F.KELLER

Deputy Comptroller General
of the United States