

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

B-176754

JAN 18 1973

AIR MAIL

Yu Il Industrial Company, Ltd.  
3-2 Changkyo-Dong, Chung-Ku  
Seoul, Korea

Attention: Mr. Lee Yung Sook  
President

Gentlemen:

Reference is made to your telegram of August 12, 1972, and subsequent correspondence, protesting the award of a contract to any other firm under Request for Proposal (RFP) No. DAJB03-72-R-3090, issued by the United States Army Korea Procurement Agency (USAKPA), for heat maintenance services.

The record reveals that the RFP was issued on June 20, 1972, and that four proposals were received by the closing date of June 23, 1972. In response to your inquiry of August 15, 1972, as to the status of the procurement, the Commanding Officer of USAKPA informed you that Yu Il was not considered to be a responsible prospective contractor due to lack of integrity and managerial capability. A determination of nonresponsibility for your firm had been made by the contracting officer on August 10, 1972, in accordance with the provisions of Armed Services Procurement Regulation (ASPR) 1-904.1, citing the failure by Yu Il to apply the necessary tenacity and perseverance to safeguard Government property, in addition to lack of integrity and managerial capability, in the performance of prior contracts for the services.

In your letter of August 22, 1972, you state that your firm has maintained an excellent business record and reputation in providing various services to United States Government organizations in Korea since 1961. You believe that Yu Il is the best qualified of the offerors and that there should be no reason whatsoever why you should not be awarded the contract in view of the fact that your prices are the lowest proposed. You mention that you have contacted USAKPA

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personnel concerning the contract award, but that you have been verbally advised that Yu Il is considered "not responsive" and, thus, your firm is not under consideration for the award. On August 19, 1972, you also filed a protest with USAKPA in which you say that Yu Il was determined to be "nonresponsive."

Although you protest on the basis that Yu Il was considered to be nonresponsive, it is clear that the responsiveness of your proposal is not in issue, and that your protest is founded on the contracting officer's determination of August 10 that Yu Il is not a responsible prospective contractor, within the meaning of ASPR 1-902 for the procurement contemplated under the subject RFP. This is the reason for the elimination of your firm from consideration for the award, and we note that in your objection to the determination you speak of your qualifications, business record and reputation. Under ASPR 1-902 a prospective contractor must demonstrate affirmatively its responsibility, and the contracting officer is required to make a determination of nonresponsibility if the information obtained does not indicate clearly that the prospective contractor is responsible.

We have been furnished a complete documented report by the Department of the Army concerning your protest. We have also been advised that you have been furnished a copy of portions of that report showing the factual basis for the contracting officer's determination of nonresponsibility for your firm. The factors involved, which concern Yu Il's integrity, managerial capability and effectiveness in safeguarding Government property under prior contracts, therefore will not be repeated here. We have, however, carefully reviewed your statements as to your business qualifications, as well as the information on which the determination of nonresponsibility was based. It is our view that the record provides ample support for the agency's position that the evidence obtained fails to clearly establish that Yu Il is a responsible prospective contractor for the procurement involved, as contemplated by ASPR 1-902 for the awarding of contracts.

We have consistently held that the determination of a prospective contractor's responsibility or nonresponsibility is primarily a matter for decision by the contracting officer, and such determinations may be questioned by our Office only if clearly shown to be arbitrary, capricious or not supported by substantial evidence, 43 Comp. Gen. 257, 262 (1963); 46 Comp. Gen. 371, 372 (1966). Since none of these conditions are indicated in connection with the determination regarding Yu Il, the record provides no grounds, in such respect, for our intervention in this matter.

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Accordingly, your protest is denied.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States