



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-177199(1)

JAN 30 1973

AIR MAIL

Moore Equipment Co., Inc.
4546 North Wilson Way
P. O. Box 8098
Stockton, California 95204

Attention: Mr. S. S. Moore
President

Gentlemen:

Reference is made to your telefax message dated October 5, 1972, and subsequent correspondence, protesting against the award of a contract to Interlog Corporation (Interlog) under Invitation for Bids (IFB) No. GS-09-DP-(P)-210, issued by the General Services Administration (GSA), San Francisco, California.

The above IFB, covering indefinite quantity requirements for repair of heavy construction, industrial and vehicular equipment and related items was issued on July 12, 1972, with a bid opening date of August 2, 1972. The work was divided into various service areas and the equipment was classified according to types in Groups I, II and III of the Bid Schedule. Separate awards were to be made for each service area, and in the aggregate within each group for Items 1 & 2 and for Items 3 & 4. Item 1 represented the labor rate per hour for services performed at the contractor's plant, and Item 2 represented the discount from the manufacturer's list price offered for the repair parts required in performing such work. Item 3 represented the labor rate per hour for services performed at the using agency's site, and Item 4 concerned the discount from manufacturer's list price offered for the necessary repair parts. For Service Area No. 1, Northern California, Interlog was the low bidder for Items 1 and 2 in Groups I, II and III, while your firm was the low bidder, and received the award, for Items 3 and 4 in Groups I, II and III.

An inspection of Interlog's plant was conducted by GSA on August 9, 1972. The plant inspection disclosed the following:

- (a) Production equipment at plant was rusted and had not been used for some time.

B-177199(1)

- (b) The majority of the equipment had not been installed.
- (c) Personnel was inadequate.
- (d) No calibration equipment was available.
- (e) Plant security was inadequate.

A financial check of Interlog was also made, which resulted in a determination that Interlog's financial status was satisfactory. However, as a result of the plant inspection, the contracting officer determined that Interlog was not a responsible prospective contractor due to lack of capacity. Since Interlog was a small business firm, the question of its capacity was referred to the Small Business Administration (SBA), San Francisco, on September 8, 1972, in accordance with section 1-1.708-2(a) of the Federal Procurement Regulations (FPR). This regulation provides, with certain exceptions, that when the otherwise acceptable bid of a small business concern is to be rejected for the reason that the firm was found by the contracting officer to be not responsible as to capacity or credit, SBA shall be notified so as to permit it to issue a Certificate of Competency (COC) regarding the firm's responsibility in such areas.

By letter of September 11, 1972, SBA advised GSA that Interlog would file for a Certificate of Competency. On October 6, 1972, SBA advised Interlog that it had been issued a COC and, by letter of the same date, SBA advised GSA that Interlog had been found competent as to both capacity and credit to perform the proposed contract.

It is your contention that Interlog lacks the capacity and credit to perform the proposed contract. You place special emphasis on the condition of the building in which the contract will be performed, stating that the building is structurally unsound and should be condemned.

In this regard, the record indicates that on October 16, 1972, pursuant to a request by the Chief Building Inspector of San Joaquin County an inspection was made of the above-mentioned building. As a result, it was determined that the building was unsafe because of electrical and structural hazards. The District Health Officer subsequently advised Interlog, by letter of October 30, that the building was declared a public nuisance and that it must be repaired, rehabilitated, demolished or removed. In accordance with such advice, Interlog

B-177199(1)

has undertaken corrective measures to obtain a safety certification for the facility and, in addition, it has leased another facility as a standby, pending the outcome of determinations regarding the safety of the plant in issue. Having reviewed the pertinent facts concerning the capacity and credit of Interlog, SBA advised GSA by letter of January 16, 1973, that the COC issued to Interlog on October 6 was revalidated.

Regarding Interlog's credit, we note that GSA, based on a financial check, determined that Interlog was financially responsible. In issuing the COC, SBA also considered the credit, as well as the capacity of Interlog. Since the contentions advanced by you go to both the capacity and credit of Interlog, it is pertinent to point out the effect of the issuance of a COC by SBA. In this regard, section 8(b)(7) of the act of July 18, 1958, Pub. L. 85-536, 72 Stat. 391, 15 U.S.C. 637(b)(7), empowers the Small Business Administration:

"(7) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract. In any case in which a small-business concern or group of such concerns has been certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and are authorized to let such Government contract to such concern or group of concerns without requiring it to meet any other requirement with respect to capacity and credit." (Emphasis added.)

In view of the above statutory mandate that procurement officers of the Government must accept SBA determinations as to capacity and credit of prospective contractors, we have concluded that it would be improper for this Office to review such determinations. B-168765, February 26, 1970; B-149096, August 9, 1962.

B-177199(1)

Accordingly, we are unable to interpose any legal objection to an award based upon SBA's issuance of a COC to Interlog in this case. Your protest must therefore be denied. B-177199(1)

Enclosed is a copy of our decision of today to the attorneys for Interlog denying their protest against the awarding of a contract to your company under the same IFB.

Very truly yours,

PAUL G. DEMBLING

For the
Comptroller General
of the United States

Enclosure

msf