

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

B-177294

JAN 31 1973

Ancor, Inc.  
821 W. Sylvania  
Fort Worth, Texas 76111

Attention: Mr. G. W. Hopper  
Vice President

Gentlemen:

By letter dated October 2, 1972, and subsequent correspondence, you protested the award of a contract to any other bidder after your firm was allegedly erroneously determined nonresponsive under invitation for bids (IFB) F41612-72-B-0402 issued by Sheppard Air Force Base, Texas. You also contend that you filed your protest before award had been made to Webster Contractors, Inc., (Webster), and, therefore, award should have been withheld pending our resolution of the protest, in accordance with Armed Services Procurement Regulation (ASPR) 2-407.8(b)(2). ✓

For the reasons hereafter stated, we perceive no basis upon which to interpose any legal objections to the award and consequently your protest is denied.

The IFB solicited bids for mess attendant services on the basis of estimated meal requirements for one base year and two succeeding option years. The ten bids received and opened on August 10, 1972, ranged from \$2,209,169.82 to \$5,194,109.25 for the three-year period. Ancor, a self-certified small business, submitted the sixth low bid in the amount of \$3,441,284.18, with a prompt payment discount of one-tenth of one percent.

The first and fourth low bids were considered nonresponsive for irregularities connected with the submission of the required bid bond. The second, third and fifth low bidders were determined nonresponsive based upon negative preaward surveys which they chose not to contest via application for certificates of competency from the Small Business Administration.

It is reported that in view of the time consumed by the above-mentioned activities and the necessity for award by October 1, 1972, to insure uninterrupted food service, preaward surveys were scheduled for the sixth, seventh and eighth low bidders between September 20 and 23, 1972. The surveys pertaining to financial capability were conducted

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by the cognizant Defense Contract Administration Services Region, while the inquiries concerning performance capability were conducted by the Air Training Command (ATC).

The financial survey recommended complete award to Amcor, Inc., (Amcor). Based upon its inquiry conducted at Amcor's office on September 25, the preaward survey team on Amcor's performance capabilities recommended that no award be made to Amcor and the contracting officer determined Amcor non-responsible based upon the conclusions that: (1) Amcor's proposed manning levels of 1,000 manhours for weekdays was only 63% of the estimated level of 1,586 manhours, indicating a lack of understanding of the scope of work required; (2) Amcor lacked sufficient management resources in food service contracts of the contemplated magnitude; and (3) Amcor had performed unsatisfactorily on recent service contracts with ATC. Thereafter, the contracting officer executed the certificate of urgency required by ASPR 1-705.4(c)(iv) in order to obviate the necessity for referring the matter to SBA for possible certificate of competency since the attendant delay would interrupt food services at Sheppard Air Force Base. Consequently, award was made to Webster on September 29, 1972, as the low responsive, responsible bidder after receipt of a positive preaward survey.

Regarding the preaward survey, you contest the team's final recommendation because it relied upon erroneous reports of prior unsatisfactory performance; erroneously considered your proposed manning levels as an aid in determining your responsibility since the contemplated contract was a service type, not a manhour type; and because it incorrectly evaluated the experience of your proposed personnel.

In accordance with your request by letter of December 4, 1972, our Office contacted the Director of Procurement, ATC, concerning your past performance on other Government service contracts. The Director of Procurement indicated agreement with the preaward survey and that the preaward survey team correctly cited Amcor's performance as unsatisfactory under two current contracts for base civil engineering support services and hospital custodial services. In the former contract, a cure notice was issued and extended citing lack of adequate supervision as partial cause. In the latter case, a cure notice was issued because of lack of adequate personnel, uniforms and health cards and the use of improper cleaning procedures.

Concerning your second allegation, paragraph 33, Part I, section C of the IFB provides, as pertinent:

"If a bid submitted in response to this solicitation is favorably considered, a survey team may contact your

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facility to determine your ability to perform. \* \* \* Contractor's representation of a minimum basic work force may be an item discussed by the pre-award survey monitor and considered by the Contracting Officer in determining a prospective contractor's responsibility."

Moreover, the treatment of manning charts indicating the minimum proposed work force as a factor to be considered in determining a prospective contractor's responsibility is in accordance with our views on the subject. B-173916, April 20, 1972.

Regarding the evaluation of the experience of your proposed personnel, as well as the determination of responsibility in general, it is our position that the determination is within the discretion of the administrative agency, and we will not overturn such a determination absent a showing the determination was made in bad faith or contrary to fact. No such showing having been made, we will not question the contracting officer's determination.

Finally, you allege that your protest was filed prior to award to Webster, and on that basis award should have been withheld pending our resolution of the protest. It is reported that award to Webster had been approved on September 27, 1972, contingent upon an affirmative equal employment opportunity compliance review. The final approval was received at 4:03 p.m., September 29, 1972, and award made to Webster immediately thereafter. However, Amcor's telegraphic protest dated September 29, 1972, 3:30 p.m., was not received by the procurement activity until October 2, 1972.

Therefore, your protest is denied.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States