



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

8-179122

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November 15, 1973

Southeastern Services Inc.  
511 Yazoo Street  
Jackson, Mississippi 39201

Attention: Mr. John L. Dwindle  
President

Gentlemen:

Your letter dated July 5, 1973, protested the award of a contract for fire prevention and protection to West Coast Fire Service, Inc. (West Coast), under invitation for bids (IFB) # 1000-73-D-0013, issued by the United States Army Safeguard System Contract, Huntsville, Alabama. This Office was requested to investigate the circumstances surrounding the solicitation and subsequent contract because of your charges that several violations had occurred. Your allegations can be summarized as follows: (1) the contract award was arbitrary and capricious; (2) the contractor is in violation of its scope of work; and (3) the contractor is in violation of the Wage Determination issued under the Service Contract Act. For the reasons discussed herein, your protest must be denied.

First, you state that the award was arbitrary and capricious because West Coast was nonresponsive and failed to comply with the Security Requirements clause of the IFB. The record reveals that 32 firms were solicited, and six firms responded to the IFB by the May 23, 1973, bid opening date. On May 24, 1973, a preaward survey was requested on the low bidder, West Coast. The preaward report dated June 6, 1973 (which included an investigation of West Coast's technical capability, security clearance, labor resources, performance record, and ability to meet the required schedule), recommended complete award. Approval by the Award Review Board was obtained on June 14, 1973, and the contract was awarded on June 19, 1973.

The administrative report on the protest indicates that your allegations of noncompliance with the Security Requirements provisions are considered to be invalid since possession of a SECRET Facility Clearance was not a requirement which had to exist prior to award of the contract. Furthermore, the contracting officer's report states that West Coast has been in compliance with the referenced provision of the contract to the extent permitted by Department of Defense procedures.

[Protest of Award for Fire Protection and Prevention]

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Whether a bidder is to be considered responsible for a particular procurement is a question of fact and, absent evidence that the determination of a bidder's capabilities was based on error, fraud, or favoritism, our Office will accept the findings of the contracting agency. 46 Comp. Gen. 371 (1956). Based on our review of the record, we believe that the agency's finding of responsibility was adequately supported by the information contained therein, and that the security requirements were not conditions which had to be met prior to award.

The contracting officer also stated that his special investigation of your charges involving Scope of Work violations revealed insufficient evidence to support the allegations. He found that the few problems encountered and corrected after the July 1, 1973, starting date did not constitute a change in the Scope of Work. In this regard it should be observed that this is a matter of contract administration which would not affect the legality of the award as made.

With respect to possible Wage Determination violations, the administrative report states that no employee complaints have been brought to the attention of the contracting agency. Moreover, it was noted that no representative of the Department of Labor, the agency of the Government charged with enforcement responsibilities of the Service Contract Act, had requested any assistance in enforcing any labor standards concerning the contract.

In consideration of the record before us, and in view of the lack of documentary evidence to support your allegations, we must accept the position of the Army as being correct.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States