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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

FILE: B-190784

DATE: May 25, 1978

MATTER OF Professional Security Officers Co.

**DIGEST:**

1. Protest against possible award to lowest bidder, which allegedly submitted unrealistically low bid under which performance in compliance with solicitation's manning requirements and applicable Department of Labor wage determination is not possible without sustaining huge losses, will not be addressed because procuring activity found low bid nonresponsive and ineligible for award because bidder failed to submit amendments to solicitation with its bid.
2. Protest against proposed award to second low bidder on ground that award would violate Anti-Pinkerton Act, 5 U.S.C. § 3108 (1970), and implementing procurement regulation is denied. GAO will hereafter interpret act in accord with judicial interpretation in United States ex rel. Weinberger v. Equifax, Inc., 557 F.2d 456, 463 (5th Cir. 1977), providing that "an organization is not 'similar' to the \* \* \* Pinkerton Detective Agency unless it offers quasi-military armed forces for hire." Where record does not show that bidder offers such a force, it is not a "similar organization" within the meaning of the act, and award may properly be made to bidder.
3. Protest alleging that second low bid or award to that bidder contravenes terms of Affiliated Bidder's clause, Armed Services Procurement Regulation § 7-2003.12 (1976 ed.), is without merit where bidder submitted required information with bid. In addition, failure to comply with clause is minor informality which may be waived or cured after bid opening.

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Professional Security Officers Co. (PCO) protests against the proposed award by the Department of the Army (Army) of a contract to provide security guard services at the Army Support Facility, Pedricktown, New Jersey, under invitation for bids (IFB) No. DABT35-78-B-0006.

The IFB, issued on October 14, 1977, contemplated the award of a service contract for the period December 1, 1977, to December 31, 1978, with an option to renew the contract; the entire duration of the contract, including the exercise of any options, is not to exceed 2 years.

Amendment No. 0001 to the IFB, issued on October 18, 1977, reduced item 0001 from 13 to 12 months and added item 0002, "Option to renew in accordance with Section J.4," for 1 month.

Nine bids were received at the bid opening, which was held, pursuant to amendment No. 0002, on November 18, 1977. The three lowest bids, submitted at a monthly rate for each of the items, were: Eastern Brokers, Inc. (Eastern), at \$3,195.92 per month; Lance Security Patrol Agency, Inc. (Lance Security), at \$11,575.20; and PSO at \$12,392.50.

By letter to the Army dated November 23, 1977, PSO protested against the award of a contract to any other bidder. The protest was filed with our Office on November 28, 1977. The Army has withheld award of the contract pending resolution of the protest.

PSO initially contends that Eastern's bid is unrealistically low and that the firm cannot perform in accordance with the manning specifications of the IFB and the applicable Department of Labor Wage Determination No. 69-260 (Revision 9) without sustaining huge losses. We find it unnecessary, however, to address these issues because the Army states that it has found Eastern's bid nonresponsive and, therefore, ineligible for award of the contract, because the bidder failed to submit amendments Nos. 0002 and 0003 with its bid, as required by the IFB. See, e.g., Quality Services, Inc., B-184887, February 18, 1976, 76-1 CPD 112; Hinck Electrical Contractors, Inc., B-184625, October 20, 1975, 75-2 CPD 244.

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PSC further contends that an award to Lance Security, the apparent low responsive bidder, would violate the so-called Anti-Pinkerton Act, 5 U.S.C. § 3108 (1970), and Armed Services Procurement Regulation (ASPR) § 22-108 (1976 ed.). The statutory authority cited by the protester provides that:

"An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia." (Emphasis added.)

PSO has shown in support of its contention: (1) that Lance Security, with Ralph V. Johnson listed as its president, is licensed by the New York Department of State as a watch guard agency under license No. 978; (2) that Lance Investigation Service, Inc. (Lance Investigation), with Ralph V. Johnson listed as president, is licensed by the State of New York as a private investigating firm under license No. 15135; and (3) that Lance Investigation of New York and New Jersey has been issued New Jersey Private Detective license No. 2179 and that the sole licensed principal of the corporation is Ralph V. Johnson. PSO additionally asserts that this information constitutes proof of "common officers, directors and stockholders" within the meaning of ASPR § 7-3002.12(b) (iii) (1976 ed.).

In interpreting the above-quoted statute over the years, we have established certain principles, enumerated in our decision in Progressive Security Agency, Inc., 55 Comp. Gen. 1472, 1474 (1976), modified, 56 Comp. Gen. 225 (1977), 77-1 CPD 8. Among those principles, we stated that "[a]lthough we have never defined 'detective agency' for the purposes of the \* \* \* Act, we have drawn a distinction between detective \* \* \* and protective agencies, and have expressed the view that the Act does not forbid contracts with the latter." 55 Comp. Gen. 1472, 1474 (1976) (citations omitted).

Subsequent to our decisions in Progressive Security, however, the Court of Appeals for the Fifth Circuit issued a decision in United States ex rel. Weinberger v. Equifax, Inc., 557 F.2d 456 (5th Cir. 1977), cert. denied, 46 U.S.

L.W. 3446 (U.S. Jan. 16, 1978), rehearing denied, 46 U.S.L.W. 3556 (U.S. Mar. 6, 1978), interpreting the act in a manner different from our prior line of decisions in this area. Id. at 463, n.6. The Equifax decision represents the first judicial interpretation of the Anti-Pinkerton Act contained in a published decision and an interpretation with which we are in essential agreement. Consequently, the interpretation given the act by the court in Equifax will hereafter also be the position taken by our Office.

On appeal from the dismissal of an action for declaratory judgment, the plaintiff-appellant in the Equifax case claimed that because the defendant, a consumer reporting agency employed by the Government to provide information about prospective Government employees, used "detective-like investigative techniques," it was a "similar organization" within the meaning of the act and, therefore, precluded from Government employment. Id. at 459.

In affirming the dismissal, however, the court found that the district court had erred in its restrictive interpretation of the act, reviewed the legislative history and purpose of the act, and concluded as follows:


"\* \* \* In light of the purpose of the Act and its legislative history, we conclude that an organization is not 'similar' to the (quondam) Pinkerton Detective Agency unless it offers quasi-military armed forces for hire. Because Weinberger fails to allege that Equifax provides so much as an armed guard, much less an armed quasi-military unit, Equifax's employment is not illegal under the Anti-Pinkerton Act. \* \* \*" Id. at 463 (footnote omitted). (Emphasis added.)

Applying the above-quoted standard promulgated by the court, we are unable to conclude on the basis of the record that Lance Security offers "quasi-military armed forces for hire" and, therefore, cannot agree with the protester's assertion that an award to Lance Security would be in violation of the act and the implementing procurement regulation.

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We find PSO's additional contention that either Lance Security's bid or the Army's proposed award would contravene ASPR § 7-2003.12 (1976 ed.) to be without merit. The regulation sets forth the Affiliated Bidders clause which is to be included in supply and services contract solicitations when the contracting officer considers it necessary in order to prevent practices prejudicial to fair and open competition. ASPR § 2-201(a) Sec. B(ii) (1976 ed.). The clause was, in fact, included in the solicitation as paragraph B.19. and the Army states that Lance Security complied with that provision of the IFB. PSO's assertion in this regard is raised primarily in support of its unsuccessful attempt to show a potential violation of the Anti-Pinkerton Act. We note, however, that even the failure to furnish the affiliates affidavit is a minor informality which may be waived or cured after bid opening. ASPR §§ 2-201(a) Sec. B(ii) and 2-405(v) (1976 ed.); Bryan L. and F.B. Standley, B-186573, July 20, 1976, 76-2 CPD 60; Kleen-Rite Janitorial Service, Inc., B-179652, January 18, 1974, 74-1 CPD 15.

In light of the above, we find no legal basis upon which to object to the award proposed by the Army. Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States