



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

092108

D-179313

November 28, 1973

Imperial-Eastman Corporation
6300 West Howard Street
Chicago, Illinois 60646

Attention: Mr. E. Fredrickson
Contract Administrator

Gentlemen:

Further reference is made to your letter of July 26, 1973, protesting against the award of a contract to Container Service, Inc. (CSI), under invitation for bids (IFB) DSA 700-73-B-2751, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio. For reasons explained below, your protest is denied.

The subject IFB, as amended, solicited bids on a quantity of 1430 tube and pipe fitting kits. Three bids were recorded at the bid opening held on May 8, 1973, at 10:30 a.m. These bids and amounts were received from the following firms: Frank & Warren, Inc., \$60.88 per unit; Imperial-Eastman, Inc., \$68.76 per unit; and Mindeco Corp., \$87.00 per unit. CSI's telegraphic bid was received at DCSC at 7:55 a.m., on May 8, 1973, 2 hours and 35 minutes prior to bid opening, but was not delivered to the bid opening room in time because of delay attributable to Government mishandling. Thereafter, the Government notified all bidders by telegraphic communication of the late receipt of CSI's bid and of the determination that it was, nevertheless, for consideration. The low bid of Frank & Warren, Inc., was rejected because of the bidder's failure to acknowledge an amendment. DCSC, on July 24, 1973, awarded the contract to the next low bidder, CSI, at \$68.75 per unit.

Your protest is based on the grounds that: (1) CSI lacks the necessary financial capacity, (2) the past performance record of CSI indicates that it cannot meet the delivery schedule, (3) the contracting officer's decision to make the award to CSI may have been improperly influenced by local Small Business Administration personnel, and (4) the preaward survey was not sufficiently thorough.

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Henry [unclear] 11/30
James [unclear]

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Armed Services Procurement Regulation (ASPR) 1-902 provides that contracts shall be awarded to responsible prospective contractors and that a responsible prospective contractor is one which meets the minimum standards set forth in ASPR 1-903. ASPR 1-905.4 provides for a preaward survey to evaluate a prospective contractor's capability to perform under the terms of a proposed contract. An examination of the survey report in this case shows that all aspects regarding the financial condition of CSI were considered. In addition to the financial data obtained from CSI, the personnel conducting the survey contacted the bank with which CSI does business and determined that any supplemental funds needed to perform this contract would be available. Furthermore, a Dunn and Bradstreet report on CSI was reviewed. Based upon its review, the survey team determined that CSI's financial capacity was satisfactory.

Next, you maintain that in the past deliveries by CSI of tube and pipe fitting kits under contracts with DCSC were not in accordance with the required delivery schedules. Specifically, you refer to a CSI contract award for 710 units under which CSI was a 150 days delinquent. Therefore, you question CSI's ability to deliver twice as many units in a shorter time than it took to perform under that contract.

The preaward survey team reached a favorable conclusion with respect to the ability of CSI to deliver the contract quantity of 1430 units, and a possible option quantity of 551 units, within the time proscribed by the solicitation. In regard to the performance record of CSI, the report indicates that 14 percent of the current contracts were either delinquent or expected to be delinquent. This was considered to be a marked improvement over a previously delinquent rate of about 26 percent. Furthermore, the preaward survey report indicates that CSI has taken numerous corrective steps to avoid the recurrence of similar problems in the performance of the subject contract. These corrective steps include the following: the prompt issuance of purchase orders; the prompt receipt and inspection of incoming materials; delivery of materials to subcontractors for painting, assembling, labeling, and packaging in time to meet the final delivery date; contracting with previous responsible vendors and subcontractors who are already set up for production; obtaining additional plant facilities, which would approximately double the rate at which the kits could be assembled; and the subcontracting for additional painting operations and manufacture of the cabinets, which was one of the main problems of delay in the earlier contract.

B-179313

With regard to the specific contract that you mention, the contracting officer concluded that the foregoing corrective action by CSI encompasses and eliminates the sort of problems which contributed to the delinquency under that contract.

You next maintain, as a result of CSI being a small business, that the Small Business Administration exerted undue influence to have the award made to CSI. Since you have furnished no evidence to support this charge and since cognizant agency personnel have denied any pressure by SBA personnel, we find no merit to your allegation.

Finally, you maintain that the preaward survey was not sufficiently thorough in investigating the CSI financial condition and the company performance record on previous contracts, as well as other related problems in production.

The Preaward Survey Board's recommendation of an award to CSI was based upon consideration of and satisfactory findings with respect to technical capability, production capability, purchasing and subcontracting, quality assurance capability, performance record, ability to meet the required schedule, and financial capability. See ASPR 1-903, concerning the minimum standards of responsibility. From our review of the report, we find no basis to take exception to the positive findings. Furthermore, special consideration was given to the problems which had caused CSI to be delinquent on some of its previous contracts. The report indicates that these production problems have been solved. Therefore, it is our view that thorough consideration was given to the factors bearing on the matter of responsibility.

We have consistently held that the question of a bidder's responsibility is primarily for determination by the contracting officer and such determination is conclusive unless there is convincing evidence that the determination was the result of arbitrary action or bad faith. 51 Comp. Gen. 439, 443 (1972). There is nothing in the record to indicate that the finding of responsibility was improper.

Finally, we see no evidence in the record to suggest, as you imply, that the one cent difference in the CSI telegraphic bid was more than a coincidence.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States