



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

B-178151

July 25, 1973

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National Steel and Shipbuilding Company
900 17th Street, N.W.
Washington, D.C. 20006

Attention: Carl R. Pagter, Esq.
Associate Counsel

Gentlemen:

Reference is made to your telegram of March 7, 1973, and subsequent correspondence, protesting an award of a contract to Triple A Machine Shop, Inc. (Triple A), under Invitation for Bids (IFB) No. N62791-73-B-0549, issued on February 7, 1973, by the Eleventh Naval District, San Diego, California. The instant invitation requested bids for drydocking and topside repairs to the USS MOUNT VERNON. Under the IFB, the work on the vessel was to be done at the Naval Station, San Diego, California, with the drydocking accomplished at Graving Drydock No. 1, located at the Naval Station, the only drydock in the San Diego area capable of docking the vessel.

At bid opening on February 22, 1973, Triple A was in the process of securing the authorization of the San Diego Unified Port District to use the drydock.

It is reported that since Triple A's bid was low and it appeared to be an otherwise responsible bidder, the contracting officer determined that award should be deferred until March 7, 1973, to afford Triple A the opportunity to have its application for use of the dock acted upon before performance had to commence under the IFB. By the terms of the invitation the contracting officer had 15 days from bid opening to make award, without requesting bidders to extend their bid acceptance period. On March 6, 1973, Triple A received authority to use the drydock and award was made to that firm on March 7, 1973.

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You contend that since Triple A did not have the drydocks available at the time of submission and opening of bids it was not a qualified bidder. You also assert that for the Navy to delay award until after the specified date (March 5, 1973) for commencement of performance constitutes an unlawful change in the bid conditions in favor of one bidder over other bidders.

The requirement for drydock facilities relates to the responsibility of a bidder. Determinations of responsibility need not be made at the time of bid opening, but rather on information of record at the time of award. 51 Comp. Gen. 448 (1972). Since the favorable determination of Triple A's responsibility was made within the bid acceptance period, we can perceive of no legal objections to the actions taken here.

There is a conflict between the bid acceptance period (the last day of which as previously noted would have been March 9, 1973) and the date specified for commencement of performance (March 5, 1973). However, where there is such an inconsistency, the bid acceptance period must necessarily prevail. The specified commencement date is based upon the assumption that an award has been made by that date. The established date for commencement of performance will be extended by the number of calendar days after the specified date that the contract is in fact awarded. See section 1-305.3(b) of the Armed Services Procurement Regulation (ASPR). Since the instant award was made within the bid acceptance period an enforceable contract resulted without prejudice to your firm. However, we are suggesting to the Secretary of the Navy that in future similar procurements one of the applicable clauses referenced in the above-cited paragraph be used when a specific calendar date is used for designating the commencement date for performance.

For the foregoing reasons your protest is denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States