



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

B-178893

September 14, 1973

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Banner Metals, Inc.
1525 Elwyn Avenue
Crofton, Maryland 21113

Attention: Mr. R. D. Bonnoy

Gentlemen:

Your letter of August 9, 1973, and prior correspondence protested the award made to McGrail Equipment Company (McGrail) on the basis that it could not comply with the delivery schedule in invitation for bids (IFB) N00104-73-B-1046, issued by the Navy Ships Parts Control Center (SPCC), Mechanicsburg, Pennsylvania, for loading and storage bomb pallets and that the bid should have been rejected as nonresponsive.

You have contended that McGrail did not have all equipment and special tooling necessary to perform the requirements of the contract and that McGrail could not obtain them without a long lead time which would make it impossible to comply with the delivery schedule. Furthermore, you have questioned McGrail's ability to conform to the IFB because you state that the contract requires the production of \$300,000 worth of supplies per month and according to a recent Dun & Bradstreet report McGrail's prior annual sales have been about \$200,000.

McGrail did not state any exception in its bid to the IFB requirements. Therefore, the matter is not involved with bid responsiveness, but rather is a question of bidder responsibility. B-177197, April 4, 1973.

It is not necessary that a prospective contractor have at the time of award all the equipment needed to perform the contract. In that connection, ASPR 1-903.2(a)(11) provides that the prospective contractor must "have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. * * *" (Emphasis supplied.)

The preaward survey conducted on McGrail specifically considered the capabilities of the firm, including the equipment and tooling on hand and the commitments from suppliers to furnish the equipment and

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B-178893

tooling that was not on hand. The survey report considered the acquisition time for obtaining the equipment and concluded that the bidder's production capability was satisfactory. Further, the preaward survey found that the firm had obtained adequate financing from two banks for the performance of the contract.

In matters of responsibility, we have held repeatedly that questions concerning the qualifications of prospective contractors are primarily for resolution by the administrative offices involved. In the absence of a showing of bad faith or lack of any reasonable basis for the determination, we are not justified in objecting to a determination by the agency. 37 Comp. Gen. 439 (1957) and 49 Comp. Gen. 553 (1970). The conclusiveness of that determination includes a bidder's ability to make delivery within the required time frame. 51 Comp. Gen. 439 (1972). There is nothing in the record to show that the contracting officer's finding of responsibility in this case was not proper.

You have suggested in the letter of August 9, 1973, that the determination was not proper because McGrail has been granted an extension of the delivery schedule under the contract confirming your contention that it would be unable to perform timely. Our Office has ascertained that a time extension has been granted to McGrail to compensate for time lost because of an ambiguity in a Government-furnished drawing. In any event, the fact that a contractor does not comply with contract requirements does not affect the validity of the contract award. Thus, even if a contractor is not performing in accordance with contract requirements for any excusable reason that would not have a retroactive effect upon the award.

Accordingly, our Office will raise no objection to the award to McGrail and your protest is denied.

Sincerely yours,

E. H. Korso, Jr.

For the

Comptroller General
of the United States