



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

B-179304

OCT 10 1973

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Diesel Systems, Incorporated  
77 Mark Drive  
San Rafael, California 94903

Attention: Mr. William N. Scott  
Vice President

Gentlemen:

We refer to your letter dated July 27, 1973, and prior correspondence, protesting the award of a contract to Theresa Homes, Incorporated (THI), under Request for Quotation (RFQ) No. H66314-73-Q-2798, issued by the Naval Regional Procurement Office (NRPO), Oakland, California.

The subject RFQ, a total small business set-aside, was issued on May 23, 1973, to 17 sources of supply for services and material to operate and maintain Government-owned equipment providing steam and electrical power to ships berthed in a COLD IRON condition (ships' boilers shut off) at two Naval facilities in California. Three offers were received by June 5, 1973, the scheduled closing date.

Written negotiations were conducted with your firm and THI, both of which submitted revised quotations by the extended deadline of June 19, 1973. The office issuing the RFQ had not had previous experience with the low offeror, THI, and requested a preaward survey. The Defense Contract Administration Services District (DCASD), San Diego, recommended that a contract for both Lots I and II be awarded to THI. On June 21, 1973, pursuant to Armed Services Procurement Regulation (ASPR) 3-508.2(b), notice was given of the proposed award of a contract to THI by June 29, 1973.

By letter dated June 22, 1973, to NRPO, Oakland, you protested against an award to any firm other than your own and by letter dated June 28, 1973, you furnished NRPO, Oakland, a complete statement of your protest. Your allegation that THI was not a responsible or qualified contractor was forwarded to the preaward monitor, DCASD, San Diego, for further consideration prior to award to THI. On July 20, 1973, DCASD, San Diego, furnished the contracting officer the detailed results of its investigation covering the significant points raised by your protest, and advised that its review confirmed the prior favorable recommendation for award to THI.

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Based on the favorable recommendation, the contracting officer determined pursuant to ASPR 1-904 that THI was a responsible prospective contractor and award was made to THI on July 26, 1973, for the contract period August 1, 1973 through July 31, 1974. Pursuant to ASPR 2-407.8(a)(1) you were advised on July 26, 1973, of the final administrative decision on your protest.

In your letter dated July 27, 1973, protesting to our Office, you set forth basically the same allegations contained in your protest to the procuring activity. Specifically, you allege that THI lacks experience in the type of work required and is not financially responsible. Additionally, you state that THI's alleged lack of experience is particularly critical because of the close proximity of explosives to the Concord Naval Weapons Station.

Our Office has held that the determination of a bidder's overall responsibility is primarily the function of the contracting agency and not of the General Accounting Office. 45 Comp. Gen. 4, 6 (1965); 38 id. 131, 133 (1958); 33 id. 549, 551 (1954). Whether a bidder is, or is not, capable of producing in accordance with the contract requirements 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, 372 (1966); 45 id. 123, 126 (1966); 40 id. 294, 297 (1960). We have also stated that the evaluation of a bidder's ability to perform is of necessity a matter of judgment which, based on fact and arrived at in good faith, must be left largely to the sound administrative discretion of the contracting officer involved since he is in the best position to evaluate responsibility. He must bear the brunt of any difficulties experienced by reason of the contractor's lack of ability, and he must maintain day to day relations with the contractor on behalf of the Government. For these reasons, we have held that it would be unreasonable to superimpose the judgment of our Office on that of the contracting officer. 39 Comp. Gen. 705, 711 (1960).

Our examination of the record shows that, upon receipt of your protest to the procuring activity, THI's experience, and financial capability were carefully investigated and found to be satisfactory. Accordingly, we are unable to conclude that the contracting officer's determination that THI was a responsible prospective contractor was the product of error, fraud or favoritism.

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Concerning the danger that may result from operating in close proximity to explosives, it is reported that TII is considered to have experienced and qualified personnel; that every safety precaution is taken; and that the loading of explosives takes place on piers different from those at which ships in COLD IRON status are berthed. Therefore, the procuring agency believes that TII is capable of safely performing the contract.

In view of the foregoing, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General  
of the United States