

Fed. Circ. Says \$249M Border Security Deal Was Lawful

By Sarah Martinson

Law360 (October 6, 2020, 6:01 PM EDT) -- U.S. Customs and Border Protection can implement a \$249 million contract with a New York company for security and transportation services at the southwest border after the Federal Circuit ruled that the deal was lawfully awarded to the lowest bidder.

A three-judge panel on Monday upheld a U.S. Court of Federal Claims ruling that the CBP didn't arbitrarily award the contract to ISS Action Inc., rejecting arguments from ISS competitor G4S Secure Solutions Inc. that ISS didn't have the required experience for the project.

While G4S had alleged that two of three previous contracts ISS listed in a proposal as prior work experience weren't "similar in size, scope, and complexity" to the border security contract, the panel ruled that CBP had been reasonable in finding that ISS had enough "collective experience" to meet the criteria to proceed to the second phase of the bidding process.

"One of ISS's contracts involved armed transportation services, and both contracts involved armed guard and security services, like those described in the solicitation," Circuit Judge Kimberly A. Moore wrote for the panel.

CBP awarded the contract to ISS in August 2019 after determining that the company offered the highest technical experience for the lowest cost. The ISS proposal was \$100 million less than the one from G4S, according to the opinion.

G4S, the only other company that bid on the contract, filed its protest in the Court of Federal Claims, and in response, the government said that G4S got a lower technical rating than ISS for not addressing "critical information" in its oral presentation.

The Claims Court ruled in January that the government reasonably awarded the security contract to ISS based on its higher technical rating and collective experience, and the Federal Circuit panel agreed that CBP had provided several reasons for choosing ISS, including the company's ability to train and maintain its staff, keep its vehicles mission-ready and its experience in related work.

ISS attorney Robert Sneckenberg told Law360 in a statement Tuesday that the circuit court's ruling "shows that the court will defer to an agency's evaluation findings where, as here, they are amply supported by the record."

"The Federal Circuit correctly recognized, as did the agency and the Court of Federal Claims before it, that ISS Action was more than qualified to successfully perform the contract," Sneckenberg said.

Counsel for the G4S and the government did not respond to requests for comment on Tuesday.

Circuit Judges Timothy B. Dyk, Kimberly A. Moore and Richard G. Taranto sat on the panel for the Federal Circuit.

G4S is represented by Gerald H. Werfel and Todd Whay of Baker Cronogue Tolle & Werfel LLP.

ISS is represented by Robert J. Sneckenberg and Daniel R. Forman of Crowell & Moring LLP.

The government is represented by Lauren Moore, Jeffrey B. Clark, Tara K. Hogan and Robert E. Kirschman Jr. of the U.S. Department of Justice's Civil Division.

The case is G4S Secure Solutions (USA) Inc. v. U.S., case number 20-1390, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Jill Coffey.