



Comptroller General
of the United States
Washington, D.C. 20548

159414

Decision

Matter of: Lifeline Ambulance Services, Inc.

File: B-277415

Date: September 22, 1997

Richard L. Grier, Esq., and Cathryn L. Ammermann, Esq., Mays & Valentine, for the protester.

Merilee D. Rosenberg, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requiring vendors to hold city franchise or permit to provide emergency ambulance services is not impermissibly restrictive—even though, as a result, only one firm may be able to compete—where requirement is necessary to meet legitimate agency need of ensuring that contractor will be able to perform services without disruption caused by city's efforts to enforce its permit requirement.

DECISION

Lifeline Ambulance Services, Inc. protests a provision in Department of Veterans Affairs (VA) request for quotations (RFQ) No. 652-82-97, issued under simplified acquisition procedures for ambulance services in Richmond, Virginia. The protester maintains that the requirement for a franchise or permit from the city of Richmond granting authority to provide emergency ambulance services (1) unduly restricts competition because only one firm possesses a franchise or permit, and (2) improperly permits a locality to prevent the federal government from selecting whichever firm it deems responsible to perform.

We deny the protest.

The RFQ includes Federal Acquisition Regulation (FAR) § 52.212-4, which, among other provisions, requires the contractor to "comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract." FAR § 52.212-4(q). This provision had the effect of incorporating into the RFQ a Richmond city ordinance which provides, in part, that "[i]t shall be unlawful for any person to transport a patient in an emergency medical services vehicle without holding a City franchise or permit." Richmond, VA, Code of the City of Richmond § 10-58(a). The ordinance further states that "[a]ny police officer of the City may issue a warrant, citation or summons charging a

person driving an emergency medical services vehicle in the City in violation of this section." Id. at § 10-58(c). The RFQ explicitly states that quotations submitted must include verifiable documentation attesting that the vendor holds a City franchise or permit.

We note initially that, while the protester argues that full and open competition is required, the RFQ was issued subject to the simplified acquisition procedures and therefore required only competition to the "maximum extent practicable." 41 U.S.C. § 253(g) (1994); FAR § 13.106-2(a)(1).

Even under a full and open competition standard, however, the RFQ's permit requirement is unobjectionable. The VA reports that the requirement is necessary to ensure timely performance of the emergency ambulance services by precluding the possibility that the services will be interrupted by the city's enforcement attempts against an unlicensed contractor. Avoidance of such a potential disruption in critical services provides a legitimate basis for imposing a local licensing requirement as part of the agency's minimum needs. See William B. Jolley, B-208443, Nov. 17, 1982, 82-2 CPD ¶ 455 at 2-3.

Further, while the protester argues that the permit requirement is not enforceable against a government contractor, citing Leslie Miller, Inc. v. Arkansas, 352 U.S. 187, 190 (1956), this is not dispositive of the issue here. In structuring a solicitation, a contracting officer reasonably may be more concerned with whether a contract will be performed properly and without interference than with whether the contractor ultimately would prevail in litigation. See What-Mac Contractors, Inc., 58 Comp. Gen. 767, 776 (1979), 79-2 CPD ¶ 179 at 12.

The protest is denied.

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