

DECISION



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

61093

FILE: B-185803

DATE: July 8, 1976

MATTER OF: McNamara-Lunz Vans & Warehouses, Inc.

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DIGEST:

1. Where broadly and generally worded invitation provision requires bidders to obtain all necessary State, local and Federal licenses necessary for contract performance without specifying any specific license or permit, matter is not for contracting officer consideration in determining bidder responsibility.
2. Obtaining of any state licenses necessary to performance of Government contract is matter for settlement by contractor and state officials and is not a factor controlling eligibility of bidder for award of contract.
3. ASPR § 1-701.1(a)(2)e 3 language--"contractual relationship"--includes within meaning leasing agreements, and fact that small business bidder obtains through leasing agreement right to use interstate authority of a non-small business firm does not affect small business status of bidder.
4. Where invitation did not require bidder to bid as agent if using transportation authority of another firm, bidder bidding in own name, although operating through another's authority, may if low be awarded contract.

Invitation for bids No. F41606-76-09012 was issued by the Randolph Air Force Base for the procurement of packing, crating, and drayage services for household goods in various Texas counties during calendar year 1976. Royal Transfer, Inc. (Royal), was determined to be the low bidder on areas I, II, and III of schedule II (inbound services), and award--after a preaward survey resulted in Royal being found to be responsible--was made to that firm.

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McNamara-Lunz Vans & Warehouses, Inc. (McNamara), protests this award for the following reasons. First, it is contended that Royal was not at the time it bid, and is not now, licensed in its own name by the Interstate Commerce Commission (ICC) or the Texas Railroad Commission (TRC) to perform intrastate or interstate shipments. The sole authority allegedly possessed by Royal is an agency agreement whereby Royal acts as an agent for King Van Lines, Inc. (King), for intrastate shipments only. Consequently, because it was required in the invitation that:

"The contractor shall, without additional expense to the Government, be responsible for obtaining and maintaining any Federal, State, and/or local operating authorities, permits, licenses, etc., necessary to performance of the work and services specified in the contract,"

it is believed that no proper determination of responsibility was made as regards Royal. As regards such a determination it is also noted that the Royal facilities are far below the normal standard of warehousing in the contract area and that being a new company Royal has not had the opportunity to prove its ability to perform a contract such as this.

Secondly, it is contended that if Royal intended to use the intrastate authority of King or the authority of any other firm for interstate shipments, it should have bid not in its own name but as an agent. Because this procurement was one set aside totally for small business and King is not a small business, it is believed that Royal as its agent was not eligible for the award it received. In this respect the interpretation given by the contracting officer to certain portions of paragraph 1-701.1(a)(2)e 3 of the Armed Services Procurement Regulation (ASPR) (1975 ed.) is questioned.

The contracting activity states that Royal is properly licensed with the ICC for inter- and intrastate shipments and that the failure of the contracting agency to investigate the status of Royal as concerns the TRC should not invalidate the award since there is only a remote chance of intrastate shipment being required. As regards the agency agreement, it is noted that since Royal meets the ICC requirements without the need to bid as an agent and since intrastate shipments

are not expected on this contract any agency relationship--and the submission of the bid by the bidder as an agent--in this area is unnecessary. In any event, the agency notes--citing our decision Illinois Glove Company, B-184739, September 24, 1975, 75-2 CPD 183-- that an affirmative determination regarding a bidder's responsibility will not be examined by our Office absent allegations of fraud.

Another exception to the general rule that our Office will not examine affirmative responsibility determinations is where the solicitation contains definitive responsibility criteria which allegedly have not been applied. United Hatters, Cap and Millinery Workers International Union, 53 Comp. Gen. 931 (1974), 74-1 CPD 310; Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; The Baxter Corporation, B-185017, November 7, 1975, 75-2 CPD 286.

The general rule applicable to the present case is that failure to possess permits and licenses, which are specifically set forth in the invitation as being required, by the time of award or at the very latest by the time of contract performance, plus any leadtime which may be necessary in the particular case, shall affect the responsibility of a contractor in cases where the permit or license is a requirement of the Federal Government. 51 Comp. Gen. 377 (1971). Thus, where an ICC, Atomic Energy Commission, or Federal Aviation Administration license was specifically called for in the invitation, we have held that whether or not a bidder has obtained one goes to the issue of the responsibility of the bidder. However, although we note for informational purposes that Royal has provided our Office with a copy of a "Haulers Agreement" whereby it leases the interstate authority necessary to perform this contract from Kings Van & Storage, Inc., an Oklahoma corporation, as regards the instance where the invitation requirement is set forth in broad, general language which does not specifically require the obtaining of a specified license(s) (see 53 Comp. Gen. 51 (1973)) we have held that whether or not such are obtained is a matter solely between the contractor and the entity responsible for granting such a license or permit. The determination of whether a license or permit has been obtained has no bearing on the award of a contract or the responsibility of a bidder. 51 Comp. Gen., supra. Because the requirement in the instant case was broad and general in nature and because no specific permit or license was set forth as being required, the issue as to the licenses has no bearing upon the determination of responsibility.

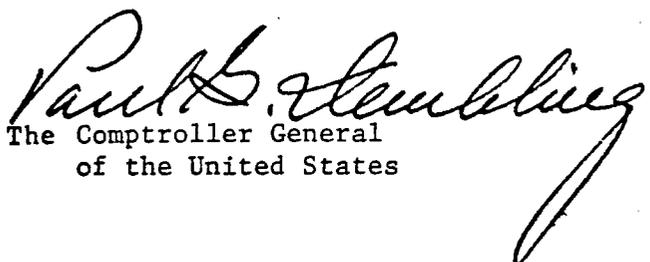
As regards the interpretation of ASPR § 1-701.1(a)(2)e 3, that regulation provides that:

"3. Trucking (Local and Long Distance), Warehousing, Packing and Crating, and/or Freight Forwarding--For trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, the annual receipts of the concern and its affiliates must not exceed \$5,000,000. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded \$5,000,000 during its most recently completed fiscal year."

We have held that a lease is a contractual relationship. Consequently, the leasing agreement has no effect on the determination of whether or not Royal may qualify as a small business. B-155703, June 9, 1965.

Finally, inasmuch as the invitation did not require a bidder to submit its bid as an agent of a firm with whom it had a leasing agreement in order to acquire the right to use that firm's ICC authority and since the bidder is liable to the Government and not that firm with the authority in its own name, we see no reason why the Royal bid, submitted in its own name, could not properly have been considered for award.

Accordingly, the protest is denied.


For The Comptroller General
of the United States