

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

FILE: B-183646

DATE: June 4, 1976

MATTER OF: Red River Transfer & Storage, Inc.

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DIGEST:

1. GAO will not resolve protest concerning agency's affirmative determination of bidder's responsibility and award eligibility where solicitation merely required awardee to possess "appropriate ICC operating authority" and agency concluded prospective contractor was agent of licensed carrier and was not required to possess ICC authority in its own name. ICC's preaward verbal advice to agency regarding requisite authority was inconclusive and contractor has filed with ICC for a declaratory order to resolve controversy as to requisite authority.
2. Protest concerning validity of estimated requirements provided in solicitation for bid evaluation purposes filed after bid opening is dismissed as untimely filed pursuant to section 20.2(b)(1), Bid Protest Procedures, 40 Fed. Reg. 17979 (1975).

Red River Transfer & Storage, Inc. (Red River) has protested the award of a pack and crate contract for Minot Air Force Base, North Dakota under solicitation No. F32604-75-0919, to Bud's Moving and Storage, Inc. The protester alleges that the contractor does not meet the requisite Interstate Commerce Commission (ICC) requirements to perform the subject contract. Bud's Moving and Storage maintains that it fully complies with all applicable ICC regulations and thus fulfills the requirement in section C, item 30 of the solicitation that the awardee possess "appropriate ICC operating authority * * * and that such authority is a condition that must be satisfied precedent to any contract award." Red River also questions whether Bud's Moving and Storage actually is the low bidder on this contract if bids are evaluated in accordance with the quantities ordered under its contract during January 1975.

It appears that the Air Force made an affirmative determination as to the responsibility of Bud's Moving and Storage to carry out this contract. It did so on the basis that the solicitation did not require bidder to possess ICC operating authority in its own name, that the prospective contractor was a bona fide agent of a licensed carrier, and that consequently a broker's license was not needed. Moreover, the Air Force obtained two conflicting verbal opinions from different segments of the ICC regarding the appropriate ICC operating authority required.

The record also shows that the contractor has filed a petition with the ICC for a declaratory order to resolve this controversy. If Red River ultimately is successful in the ICC proceeding, its protest action would become academic. While we therefore have awaited ICC action, we believe it is now appropriate to proceed with our consideration of this protest rather than to keep the matter open pending ICC action.

In our opinion we find no basis for objecting to the actions of the Air Force. As a general rule, this Office does not review affirmative responsibility determinations unless either the solicitation contains definitive responsibility criteria which allegedly have not been applied or fraud is shown on the part of procuring officials. Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64 and Yardney Electric Co., 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

In this case there is no requirement in the solicitation that the prospective contractor hold a license in its own name. Victory Van Corporation et al., 53 Comp. Gen. 750, 74-1 CPD 178. Rather, the protester is alleging that such is required under a proper interpretation of the ICC law. Whether or not a prospective contractor meets a license requirement would appear to involve a determination of the bidder's eligibility for award. As such, we are not inclined to review an affirmative determination of a bidder's compliance with a general requirement for "appropriate ICC operating authority." In any event, since the award was made on the basis that the firm complied with the broad criteria for "appropriate" operating authority after conflicting verbal legal advice was obtained from different segments of the ICC, we do not view the award as contrary to the indefinite requirement for operating authority as provided in this solicitation.

Finally, in rebuttal to the agency report on its protest, Red River contends that it is actually the low bidder. Specifically, the protester believes that 90 percent of the services are covered under only 4 items of the solicitation, as evidenced by a listing of shipments it handled during January 1975. It contends its bid would be low if bids had been evaluated consistent with the January 1975 requirements rather than with the total estimated requirements provided in the solicitation.

The validity of the estimated requirements provided in the solicitation for bid evaluation purposes should have been questioned prior to bid opening and the question therefore is dismissed as untimely raised. Section 20.2(b)(1), GAO Bid Protest Procedures, 40 Fed. Reg. 17979 (1975). In any event, we note that it would be

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detrimental to the competitive bidding system to evaluate bids for less than the total estimated requirements provided in the solicitation. 50 Comp. Gen. 583 (1971).

For the foregoing reasons, the protest is dismissed.

Milton Fowler

for

Paul G. Dembling
General Counsel