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E. W. [unclear]
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DECISION

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

FILE: B-187070

DATE: February 15, 1977

MATTER OF: Advertising Distributors of Washington, Inc.

DIGEST:

1. Requirement in IFB for local facilities is a question of responsibility, rather than of responsiveness, consequently final arrangements for such facilities were not required at time of bid opening, but were only required at time of award.
2. Allegation that low bidder was nonresponsive because price was so low as to endanger performance and because of inadequate past performance will not be considered since protests concerning affirmative determinations of responsibility are no longer reviewed by GAO except for reasons not applicable in this case.
3. Correction of bid in which bidder incorrectly completed "Affirmative Action Provision" was proper since provision involves a question of responsibility, not responsiveness and error may be treated as a minor informality.

Advertising Distributors of Washington (ADW) protests the award of contract No. TIR-7T-58 to the low bidder, Mail America (MA), under invitation for bids (IFB) No. A:FM:P 76-49 issued by the Internal Revenue Service (IRS). The IFB solicited bids for mailing and distribution services, storage, requisition fulfillment and mailing list services as required by the IRS from July 1, 1976, to July 1, 1977. Three grounds of protest are stated.

First, ADW contends that MA's bid was nonresponsive because at the time of bid opening it did not have its "main plant and storage areas" located within either the commercial zone of Baltimore or the commercial zone of Washington, D.C. as required by the IFB. In this regard, we think the term "main plant" as used in the IFB meant that the contractor's main plant for performing the contract should be located within the geographical boundaries specified. It would not be reasonable to reject a bid from a contractor who planned to use a suitable plant or facility within the prescribed geographical boundaries merely because the contractor's home plant was located outside those boundaries. Our Office has consistently held that the requirement that the contractor's facilities be located in a given area is a matter of responsibility rather than of responsiveness and, therefore, a bidder may be properly allowed to demonstrate compliance

with the requirement after bid opening. See Plattsburgh Laundry and Dry Cleaning Corporation, 54 Comp. Gen. 29, 33 (1974) 74-2 CPD 27, and cases cited therein. In this regard, we note that while at the time of bid opening MA's main plant was located outside either of the specified commercial zones, MA in its bid listed an address within the Washington, D.C. commercial zone where it intended to perform the contract. The availability of this space was subsequently withdrawn by the landlord, but almost immediately MA obtained another facility within the Washington, D.C. commercial zone. The new facility was found to be adequate and satisfactory for the purposes of performing the prospective order fulfillment services, and was found to meet the specifications of the IPB as to location, square footage, type of space required, and security.

Next the protester asserts that the IRS should have found MA nonresponsible because the price bid by MA was so much lower than the other bids as to create a presumption that MA could not fulfill its obligations at the bid price. ADW also contends that MA's performance record on similar contracts did not suggest responsibility. In this connection, every award imports an affirmative determination of the successful bidder's responsibility. However, this Office does not review protests concerning affirmative determinations of responsibility, absent allegations of fraud on the part of contracting officials or of the failure to apply definitive responsibility criteria. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. While we do consider protests involving negative determinations of the protester's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform.

Finally, ADW states that MA failed to complete the "Affirmative Action Program" provision in the IPB thus rendering its bid non-responsive. In Royal Industries, B-185571, March 1, 1976, 76-1 CPD 139, we observed that this requirement concerns bidder responsibility rather than bid responsiveness, and may be completed after bid opening. Moreover, the fact is that the low bidder responded to the provision by noting that it had developed and had on file an affirmative action program. Subsequently, before award, the contracting officer permitted MA to correct its response and substitute the notation that it had not previously had Government contracts subject to the written affirmative action program requirements. MA asserted that it had less than 50 employees thus it was

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exempt from filing. In view of the provisions of Federal Procurement Regulations (FPR) § 1-12.805-4(b)(1) which treats the failure to execute the representation regarding an affirmative action program as a minor informality, we are of the opinion that it was proper for the contracting officer to treat MA's failure to correctly complete the representation as a minor informality and allow correction pursuant to FPR § 1-2.405.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States