

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

11976

Transp.
Mr. Feinstein

FILE: B-196511

DATE: November 8, 1979

MATTER OF: National Ambulance and Escort Service, Inc.

[Protest of Bid Rejection as Nonresponsive]
DIGEST:

1. Where bidder qualifies bid by providing for change in price of services to be furnished if certain circumstances occur, bidder has not offered firm-fixed price and bid is nonresponsive.
2. Allegation that bidder is not regularly engaged in providing service solicited is matter of responsibility, affirmative determination of which is not reviewed by GAO except in certain circumstances not present here.

DL 6-03306

National Ambulance and Escort Service, Inc.
(National) protests the award of a contract to Metro Ambulance Company (Metro) under invitation for bids (IFB) No. 541-8-80 issued by the Veterans Administration. National's bid was rejected as nonresponsive. For the reasons stated below, the protest is denied.

DL 6-03306

AGC00016

The IFB contemplated a firm-fixed price contract for ambulance, ambulance and staff car services. National submitted a bid which included a gasoline price escalator clause that would raise the cost of the services to the Government if the price of gasoline increased during the course of the contract. The contracting officer rejected National's bid as nonresponsive on this basis. National believes that as the low bidder it is entitled to the award despite the gasoline price escalator clause, and advances several arguments to justify its use of the escalator provision. National also claims that Metro was not regularly engaged in the ambulance business at the time bids were opened and therefore should not have been awarded the contract. In this connection, the IFB stated that bids "will be considered only from bidders who are regularly established in the business called for."

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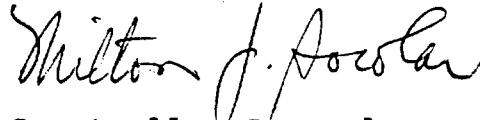
This case is one in which it is clear from the protester's initial submission that the protest is without legal merit, and we therefore will decide the matter on the basis of this submission without requesting a report from the contracting agency. Furgo Northwest, Inc., B-196078, October 11, 1979, 79-2 CPD ____.

We have held that where a bidder qualifies its bid for a firm-fixed price contract by providing for a change in the price if certain circumstances occur, the bid must be rejected as nonresponsive since the bidder has not offered a firm-fixed price. Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183; 41 C.F.R. 1-2.404-2(b)(1) (1978). Thus, National's bid was clearly nonresponsive and was properly rejected.

National's contention that Metro was not regularly engaged in the ambulance business at the time bids were opened is a matter of bidder responsibility as it concerns the bidder's ability to perform its obligations under the terms of its submitted bid. New Haven Ambulance Service, Inc., 57 Comp. Gen. 361 (1978), 78-1 CPD 225. This Office does not review affirmative determinations of responsibility except where the protester alleges fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. School Transportation Co., Inc., B-192799, January 10, 1979, 79-1 CPD 12. There is no allegation of fraud in this instance, and we do not view the solicitation's statement cited above as creating a definitive responsibility criterion. Definitive responsibility criteria involve specific and objective responsibility factors, compliance with which is a necessary prerequisite to award. See Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365. Accord, J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. We do not believe that the phrase "regularly established in the business called for" is sufficiently susceptible of objective quantification to be considered a "definitive responsibility criterion" and therefore do not consider

that the contracting officer's affirmative determination of Metro's responsibility is susceptible of our review.

The protest is summarily denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States