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DECISION



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

FILE: B-206434.2

DATE: April 9, 1982

MATTER OF: Impact Instrumentation, Inc.

DIGEST:

Complaint is dismissed as premature where it does not concern immediate procurement but instead challenges fairness of possible future solicitations.

Impact Instrumentation, Inc. has asked us to review the procurement procedures employed by the Old Dominion Emergency Medical Services Alliance, Inc. (ODEMSA) under a grant from the Department of Health and Human Services.

On February 16, 1982, Impact filed a previous complaint with our Office objecting to the proposed award by ODEMSA of a contract for portable suction units to an allegedly nonresponsive bidder. That solicitation was subsequently canceled and the requirement was resolicited. Because of an alleged ambiguity in the second solicitation, however, ODEMSA then notified all offerors that it would not be acquiring the items at the present time. Impact withdrew its original complaint.

Impact now expresses concern that ODEMSA may elect to circumvent proper procurement procedures by acquiring a "non-compliant device" to meet its requirements. Specifically, Impact states that ODEMSA has exhibited a "pattern of discrimination" against Impact; that ODEMSA's alleged past attempts to award to a "non-compliant" bidder is tantamount to restraint of trade which also discriminates against other "non-compliant" bidders which would not be afforded preferential treatment; and that ODEMSA has no authority to award to a "non-compliant" bidder for an item which does not meet minimum performance criteria. Further, Impact "fears" that ODEMSA will again attempt to provide rescue vehicles with "non-compliant" devices by "circumventing" competitive bidding procedures.

Impact's complaint is premature. Impact speculates that the grantee's future requirements for portable suction units will be met through a circumvention of proper competitive procurement procedures and that therefore the fairness of future solicitations may be impaired. Impact is, in essence, anticipating deficiencies in future procurements for the item.

Our review of grants is undertaken pursuant to a Public Notice at 40 Fed. Reg. 42406, September 12, 1975, where we stated that we would consider complaints concerning the "propriety of contract awards made by grantees in furtherance of grant purposes upon request of prospective contractors." With respect to bid protests involving direct Federal procurements, we have stated that our review is reserved only for considering whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. Koolshade Corporation, B-197897, September 21, 1980, 80-2 CPD 164. Similarly, in reviewing the propriety of grantees' actions, we think the award or proposed award of a contract must be in issue. Here, there is no solicitation outstanding under which an award could be made and we are left with Impact's speculation that the grantee may attempt to "circumvent" competitive bidding procedures in some unspecified manner. Under these circumstances, we believe the complaint is premature and is not for consideration on the merits. Cf. General Mills, Inc., B-199359, September 5, 1980, 80-2 CPD 179; Koolshade Corporation, supra.

The complaint is dismissed.

F. H. Barclay, Jr.
For Harry R. Van Cleve
Acting General Counsel