

2-876

**DECISION**



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

**FILE:** B-207179; B-207179.2 **DATE:** January 20, 1983

**MATTER OF:** Ford Motor Company; Chrysler Corporation

**DIGEST:**

1. Unannounced evaluation criteria were used to exclude low bids under District of Columbia procurement for police cars. Criteria essentially related to the District's perceived deficiencies in the cars to be furnished by low bidders rather than to the low bidders' competency to furnish acceptable cars. Consequently, the exclusion of the bids was improper.
2. GAO will not consider claim for bid preparation costs under District of Columbia procurement in absence of request for decision on claim by appropriate official of that government.

Ford Motor Company and Chrysler Corporation protest the award of a contract for 90 police cars to Curtis Chevrolet by the Government of the District of Columbia, Department of General Services (District), under invitation for bids (IFB) No. 0316-AA-23-0-2-DD.

We sustain the protests since the District employed a defective IFB. But since the contract was completed in July 1982, we are recommending corrective action to the District only for future procurements. Ford's claim for bid preparation costs will not be considered.

The IFB was issued on March 4, 1982, for the purchase of 30 unmarked sedans (item 1), 52 marked sedans (item 2), and eight marked station wagons (item 3). Upon bid opening on April 2, the low bids were as follows:

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	<u>Ford</u>	<u>Chrysler</u>	<u>Curtis Chevrolet</u>
Item 1 (model) (unit price)	Fairmont Futura \$6,375.00	Plymouth Gran Fury \$6,832.00	Malibu \$7,830.88
Item 2 (model) (unit price)	Fairmont Futura 6,658.00	Plymouth Gran Fury 7,223.00	Malibu 8,070.05
Item 3 (model) (unit price)	No bid ***	Plymouth Reliant 6,740.00	Malibu 8,900.53

Even though Ford was lower on items 1 and 2, and Chrysler lower on item 3, the District awarded the contract on April 13 to Curtis Chevrolet, a District of Columbia dealership. Award was not made to Ford or Chrysler because the District felt that neither offeror could supply cars suitable or desirable for police work. Ford and Chrysler both contend that this action violated well-established competitive bidding principles, and, in addition, Ford seeks remuneration for its bid preparation costs.

The District alleges that both the Ford and Chrysler products had serious deficiencies of design and performance affecting their utility as police cars. In essence, the District contends that the lower price of these cars would be off-set by their disadvantages.

The District states that the 1982 Fairmont--based on the District's "considerable experience" with the 1981 Fairmont--is not suitable for use as its police car because of alleged: "excessive front tire wear, power steering failures, braking deficiencies, incompatibility with normal police pursuit tires in tight turns, low crash survivability, and uncomfortable interior." The District further was of the view that the "features of the 1982 Fairmont [were similar] to those of the 1981 Fairmont." Because of these perceived undesirable features, Ford, in the District's

view, was "nonresponsible in that it bid on a vehicle that had performance features which were determined to be clearly unsuitable for the Police Department's use." The IFB did not contain any vehicle performance criteria related to these perceived deficiencies, however, although it would certainly have been permissible for the District to have included desired features in its IFB. For example, it could have specified that all offered vehicles were to have a certain minimum front tire tread life. It could have specified a minimum crash survivability rating, or a minimum rear wheel lift factor during emergency braking. That the District failed to do so means that Ford could not be deemed unacceptable on the basis of criteria of which it had no knowledge at the time of bid opening. Further, we also note that attached to the IFB was Federal Standard No. 122T which specifically includes the Fairmont in its list of "representative USA law-enforcement automobiles."

The District justified its rejection of the Chrysler bid for reasons of alleged: higher fuel consumption, higher costs for repair parts, and lack of a District-based "large, technical training center" for police department mechanics. Because of these perceptions, the District determined that "Chrysler was nonresponsible in that its service training was inadequate to assist the District in properly servicing and maintaining the vehicles it offered to sell." Again, there is no mention in the IFB that these factors would be employed by the District in its evaluation. With respect to training, the IFB merely provided that the bidder shall supply training to police department mechanics. If the District wanted the successful bidder to provide a District-based training center, it could have inserted such a requirement in the IFB. We also note that the District makes no mention of the Reliant model bid by Chrysler for item 3, and only alleges repair parts and fuel consumption deficiencies in relation to the Gran Fury model bid on items 1 and 2. Again, if the District had desired to specify a minimum fuel consumption figure or a maximum repair cost evaluation factor it could have done so in the IFB.

Ford and Chrysler generally argue that it was improper for the District to reject their bids for the reasons, noted above, that were not in any way alluded to in the IFB. Beyond this, both Ford and Chrysler argue that the District's reasoning was not factually sound. Specifically, Ford argues that its 1982 Fairmont model has been changed to improve performance over the 1981 model. And Chrysler argues that its "mobile training school" for service training should have been considered acceptable.

The Ford and Chrysler positions inferentially raise the question as to the proper legal categorization of the District's perceived deficiencies. The concept of responsiveness is usually described in terms of an obligation to perform, without exception, the exact requirement described in the Government's procurement documents. By contrast, responsibility is a more general legal concept relating to the prospective contractor's capability of performing a Government contract. Although it is sometimes difficult to categorize a particular circumstance as clearly relating either to responsiveness or responsibility, it is well-established that the responsiveness of a bid is to be determined based on the conformity of the bid to the material terms of the IFB. Since the District's IFB did not contain any terms bearing on the product features as discussed above, the Ford and Chrysler bids cannot be said to be nonresponsive to that IFB.

If Ford and Chrysler had performed poorly under prior contracts, the prior poor performance might arguably be characterized as relating to the "tenacity and perseverance" of the companies--a responsibility element. But the District has not shown how either Ford or Chrysler failed to perform under prior contracts; rather, the alleged Ford product deficiencies arose after the prior contract had been performed. We consider that the District's decision to reject the Ford and Chrysler bids was essentially based upon perceived deficiencies in the cars to be furnished, rather than upon an evaluation that both companies lacked the requisite capabilities to make acceptable products. Although the District also mentions that Chrysler lacked a

District-based training center, and even assuming this concern relates to a definitive responsibility standard, this standard was not set out in the IFB. Moreover, it is Chrysler's position that it could show substantial compliance with the need for mechanics' training even though its service center is not located in the District.

Again, we must stress that Ford and Chrysler were evaluated on the basis of standards not present in the solicitation, and their bids could not, therefore, be rejected for criteria revealed after bid opening.

We must conclude that the IFB as issued by the District for this procurement was patently defective. Nevertheless, as we understand that the contract cars have been delivered to the District, we cannot recommend that the procurement be recompeted. But we are recommending that the District observe proper procurement procedures, as discussed above, in any future procurements for these vehicles.

Protests sustained.

Given the circumstances of the award to Curtis Chevrolet, we find the District's actions to have been arbitrary and capricious. However, we cannot consider Ford's claim for bid preparation costs. Because the District of Columbia is a legal entity separate and distinct from the United States Government, we have consistently taken the position that our Office is not vested with authority to settle claims against the District. 1 Comp. Gen. 451 (1922); 36 *id.* 457 (1956); B-168704, January 16, 1970; B-184189, July 7, 1975. But we will issue decisions on claims to the District of Columbia government upon the request of appropriate District officials. 47 D. C. Code § 121 (1981); B-199477, May 3, 1982. As there is no request present in the instant case, we have no authority to consider Ford's claim for bid preparation costs.

Claim dismissed.

*for* Milton J. Forster  
Comptroller General  
of the United States