DECISION

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

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FILE: B-212570 **DATE:** March 20, 1984

MATTER OF: Pedestrian Bus Stop Shelters, Ltd.

DIGEST:

Contention that award of a bus stop shelter franchise agreement resulted from an improper transfer of the proposal is denied where, although the proposal referred to the offeror corporation by a number of different variations of its legal name, it is clear from the proposal and other available information that the awardee was actually the intended offeror.

Pedestrian Bus Stop Shelters, Ltd. protests the award by the District of Columbia of Formal Agreement No. DT 8220 to CSC of Washington, D.C., Inc. The negotiated agreement is a 10-year exclusive franchise which provides for the franchisee to design, erect, and maintain up to 500 bus stop shelters in the District and to pay the District a fixed percentage of the gross receipts derived from selling commercial advertising space on the shelters. The protester contends that the awardee did not participate in the procurement and, therefore, was not eligible for award; it contends that the initial proposal and the best and final offer actually were submitted by a different entity: Convenience and Safety Corporation of Washington, D.C., Inc.

We deny the protest.

In response to its request for proposals, the District received an initial proposal accompanied by a letter on stationery of the "Convenience and Safety Corporation" of a New York City address. At the top of the letter was the logo "C&S." The letter began, "The officers and directors of Convenience & Safety Corporation of Washington, D.C., Inc. (CSC) are pleased to respond to the Bus Shelter Request For Proposal (RFP) . . . ." It continued by describing the offeror's qualifications, usually referring to the offeror simply as "CSC." The one exception was a

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statement that identified William B. Fitzgerald as a 50 percent owner of "CSC of Washington, D.C. Inc." The letter was signed by Alexander J. Mautner, who was identified as "President, CSC Washington, D.C. Inc." at a Washington, D.C. address. The cover sheet of the initial proposal indicated that it was submitted by "Convenience and Safety Corporation of Washington, D.C., Inc." A similar letter and cover sheet accompanied the offeror's best and final offer.

Following the evaluation of the best and final offers, the District's Acting Director of Transportation wrote to Mr. Mautner and informed him that his firm, Convenience and Safety Corporation of Washington, D.C., Inc., had been selected for award of the franchise. The letter also stated that before a contract could be executed, the District would have to determine that the offeror was responsible. The protester apparently obtained a copy of the letter and wrote to this Office contending, initially, that Convenience and Safety Corporation of Washington, D.C., Inc., did not exist, either as a District of Columbia corporation or as a foreign corporation authorized to do business in the District, and, therefore, any award to that entity would be a nullity.[1] The contracting officer determined, however, that delay in awarding the franchise agreement would deprive the District of substantial revenues and, notwithstanding Pedestrian's protest, awarded the franchise to CSC of Washington, D.C., Inc. The protester then complained to this Office that award had been made to an entity that had not submitted a proposal.

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[1]In addition, the protester's counsel informed us that no other entity could now use the name "Convenience and Safety Corporation of Washington, D.C., Inc." because, subsequent to the filing of this protest, counsel formed a corporation in the District of Columbia under that name.

In support of its protest, Pedestrian cites a number of cases illustrating the general rule that, in advertised procurements, an agency may not award a contract to any entity other than one that submitted a bid. See, e.g., 44 Comp. Gen. 61 (1961); Ebsco Interiors, B-205526, August 16, 1982, 82-2 CPD 130; Martin Company, B-178540, May 8, 1974, 74-1 CPD 234. As the District correctly notes, however, these cases are not directly applicable to negotiated procurements. The reason for this, of course, is that in an advertised procurement, the requirement that the identity of the bidder be unambiguous at the time of bid opening is based on the need to preclude the bidder from later avoiding the obligation of its bid. See, e.g., Mark II, Inc., B-203694, February 8, 1982, 82-1 CPD 104. In the absence of proof of a mistake, a bid may not be modified, explained, or withdrawn after bid opening.

In a negotiated procurement, on the other hand, an offeror generally may withdraw its offer any time prior to award. United Electric Motor Company, Inc., B-191996, September 18, 1978, 78-2 CPD 206. The concern that award of a negotiated contract be made only to an offeror who submitted an initial proposal usually surfaces only in cases involving late proposals, see, e.g., S.H.E. Corporation, B-205417.2, September 30, 1982, 82-2 CPD 298, or in cases involving an attempted transfer or assignment of a proposal, since a proposal may not be transferred or assigned except by operation of law, sale of an entire business, etc. Numax Electronics, Inc., 54 Comp. Gen. 580 (1975), 75-1 CPD 21.

In essence, the protester here is contending that award of the bus shelter franchise to CSC of Washington, D.C., Inc., based on a proposal the protester claims was submitted by Convenience and Safety Corporation of Washington, D.C., Inc., resulted from an improper transfer of the rights in the initial proposal from one entity to another. Thus, the issue for us to resolve is whether the awardee was an original participant in the procurement. Broadly speaking, this factual inquiry is similar to the issue in our cases involving advertised procurements, that is, to determine who it was that actually submitted the bid. For this reason, although these cases are not controlling, we find them helpful to the resolution of the issue presented here.

We have examined copies of both the initial proposal and the best and final offer submitted by the awardee, and it appears that the offeror was referred to almost interchangeably in both documents and the accompanying cover letters as "Convenience and Safety Corporation of Washington, D.C., Inc.," and as "CSC of Washington, D.C., Inc." The address given for both of these entities, however, was always the same. The offeror was also, but less frequently, described as "CSC Washington D.C., Inc." and "Convenience and Safety of Washington." The initials "CSC" were used as a shorthand reference both to the offeror and to one of its two 50 percent owners: Convenience and Safety Corporation. Significantly, both the initial proposal and the best and final offer were signed by an individual described as "President, CSC Washington, D.C., Inc." and, of all the various descriptions, it appears that the only entity actually existing as a District of Columbia corporation at the time of these submissions was CSC of Washington, D.C., Inc.

In our view, these variations were merely discrepancies involving a matter of form. With the exception of the shorthand reference "CSC," each variation was used simply as a different way of referring to the same legal entity. See Mark II, supra; Jack B. Imperiale Fence Co., Inc., B-203261, October 26, 1981, 81-2 CPD 339. We view the use of these variations as similar to the use of a trade name, a practice that we believe the corporation statutes of the District of Columbia allow. See 51 Comp. Gen. 494 (1972). In short, from our review of the record, we think it was clear that both the initial and revised proposals were submitted by the intended offeror, CSC of Washington, D.C., Inc., and we see no indication of an attempt to transfer rights in the proposals from one entity to another.

In its comments on the District's report to this Office, the protester suggests that we should insist on examining the originals of the awardee's proposals rather than deciding this protest based on the copies that the District provided to us. We have no reason to suspect, however, that the copies provided us were inaccurate; thus, we regard the protester's suggestion as unnecessary.

We deny the protest.

for Milton J. Socolar
Comptroller General
of the United States