

**DECISION**



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

**FILE:** B-219814.2 **DATE:** September 27, 1985

**MATTER OF:** Bellevue Bus Service, Inc.--  
Request for Reconsideration

**DIGEST:**

1. Solicitation requirement that a preaward inspection of apparent low bidder's vehicles be performed involves responsibility, the bidder's apparent ability and capacity to perform all the contract requirements, and does not involve the bidder's responsiveness. Responsibility may be shown any time prior to award and there is nothing wrong with bidder altering, before award, how it intends to perform or otherwise improving its position to perform.
2. Requirement in solicitation that vehicles meet specific state standards governing transportation vehicles is a definitive criterion of responsibility. Agency's determination that awardee's vehicles meet state standards was reasonable where protester merely disagrees with determination.

Bellevue Bus Service, Inc. (Bellevue), requests reconsideration of our decision in Bellevue Bus Service, Inc., B-219814, Aug. 15, 1985, 85-2 C.P.D. ¶ \_\_\_\_\_, in which we dismissed its protest in connection with invitation for bids No. F25600-85-B0040, issued by Offutt Air Force Base, Nebraska, for school bus service.

We affirm our prior decision.

We held in Bellevue Bus Service, Inc., B-219814, supra, that it was permissible for the Air Force to perform a second preaward inspection of the apparent low bidder's (Pony Express) vehicles after an initial inspection showed that Pony Express was not responsible. Bellevue argues that allowing the second inspection violates section 303B(a) of the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 1175, 1179 (1984), 41 U.S.C. § 253b(a),

033291

which states that "an executive agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation."

Bellevue contends that the Air Force could not reinspect Pony Express' vehicles since the solicitation only contemplated one inspection. In this regard, Bellevue refers to the following paragraph of the solicitation:

"Prior to award of this solicitation a preaward inspection of the apparent low bidder's school transportation will be performed by officials from Offutt AFB, NE. The purpose of this inspection is to establish that the prospective contractor for school transportation service complies with or exceeds the state of Nebraska's minimum standards governing school transportation vehicles. In the event that the pre-award inspection reveals that the apparent low bidder cannot meet the established State of Nebraska criteria for the school transportation, the bidder will be declared not responsible and the bid will be rejected."

Bellevue argues that since the solicitation referred to "a preaward inspection," the solicitation intended only one inspection be made and the Air Force should not have provided a second inspection of the awardee's vehicles. Bellevue states that to allow more than one inspection in view of the above-quoted paragraph in the solicitation violated CICA's mandate that sealed bids be evaluated solely on the factors specified in the solicitation.

Section 303 B(a) of CICA relates to the responsiveness of a bid. Responsiveness concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation. DAVSAM International, Inc., B-218201.3, Apr. 22, 1985, 85-1 C.P.D. ¶ 462.

The above-quoted solicitation requirement, however, concerns evidence of the bidder's responsibility, which refers to the bidder's apparent ability and capacity to perform all the contract requirements. DAVSAM International Inc. B-218201.3, supra. We have held that how a bidder intends to meet its obligations if awarded an advertised contract involves bidder responsibility, which is determined as of the time of award rather than at bid opening. Therefore, there generally is nothing improper with a bidder's altering, before award, how it intends to perform

or otherwise improving its position to perform. Jersey Maid Distributors Inc., B-217307, Mar. 13, 1985, 85-1 C.P.D. ¶ 307. As we stated in the prior decision, second inspections are not precluded since information as to a firm's responsibility may be furnished any time prior to award.

Bellevue also alleges that the award to Pony Express after its vehicles had failed to meet state of Nebraska minimum standards for school transportation vehicles involves the Air Force's failure to apply a definitive criterion of responsibility. Bellevue alleges that the Air Force did not properly apply the requirement in the solicitation that the vehicles meet standards required by local, state and county laws found in rule 32, title 92, chapter 32, of the Nebraska standards governing transportation vehicles.

While generally we do not review affirmative determinations of responsibility, we will do so where there are definitive criteria of responsibility in the solicitation. True Machine Company, B-215885, Jan. 4, 1985, 85-1 C.P.D. ¶ 18. Definitive criteria of responsibility involve specific and objective standards of responsibility, compliance with which is a necessary prerequisite to award. We view the ability to meet specific Nebraska minimum standards as being a definitive criterion. The contracting officer states that he relied on the agency's transportation department in finding that Pony Express had met the Nebraska requirements. Bellevue has not shown that the Air Force's findings were unreasonable and Bellevue's arguments amount to mere disagreement. Accordingly, it has not met its burden of proof. See Evans, Inc., B-216260.2, May 13, 1985, 85-1 C.P.D. ¶ 535 at 6.

The prior decision is affirmed.

  
Harry R. Van Cleave  
General Counsel