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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Quality Transport Services, Inc.

File: B-225611

Date: March 26, 1987

DIGEST

Where solicitation for moving services does not require that Interstate Commerce Commission (ICC) authority be held by bidder as a prerequisite to being found responsible, joint venture does not have to be found nonresponsible because only one joint venturer has ICC authority.

DECISION

Quality Transport Services, Inc., protests the award of any contract to the joint venture of M.R.W. International, Inc. and Zenith Van and Storage Company, Inc. (M.R.W./Zenith), under area 2, schedules I and II, of invitation for bids (IFB) No. DAHC30-87-B-0008, issued by the Department of the Army. The IFB is for transportation services, including packing and crating, for the movement of personal property belonging to Department of Defense personnel. Quality contends that M.R.W./Zenith does not possess in its own name the operating authority from the Interstate Commerce Commission (ICC) that Quality believes is required by the terms of the IFB as a prerequisite to receiving award, and that award to the joint venture thus would be improper.

We dismiss the protest.

As required by Federal Acquisition Regulation (FAR), 48 C.F.R. § 47.207-1(a) (1986), where a requirement involves regulated transportation, the IFB contained the Permits, Authorities, or Franchises clause set forth in FAR, 48 C.F.R. § 52.247-2 (April 1984), as follows:

> "(a) The offeror certifies that the offeror does __, does not __, hold authorization from the Interstate Commerce Commission or other cognizant

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regulatory body. If authorization is held, it is as follows:

_____
(Name of regulatory body)

_____
(Authorization No.)

"(b) The offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded. In addition, the offeror shall, at the offeror's expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments."

Immediately after bid opening, Quality protested to the contracting officer that the bid of the M.R.W./Zenith joint venture should be rejected because while Zenith, one of the joint venturers, possessed ICC operating authority to perform interstate transportation services, M.R.W./Zenith, the bidder, did not and thus lacked proper ICC operating authority. The contracting officer contacted the ICC to obtain information regarding the proper operating authority for the contract work, and reportedly was informed that the joint venture had adequate ICC authority as long as one of the parties of the joint venture had ICC operating authority to perform interstate transportation services. Consequently, the contracting officer denied Quality's protest.

Whether a bidder satisfies a general solicitation requirement for operating rights involves the bidder's responsibility. See Lewis & Michael, Inc., B-215134, May 23, 1984, 84-1 C.P.D. ¶ 565. Before awarding the contract, the contracting officer necessarily will have to find that M.R.W./Zenith is responsible. Our Office does not review affirmative determinations of responsibility absent a showing of fraud or bad faith on the part of procuring officials, or an alleged failure by the agency to apply definitive responsibility criteria, that is, specific and objective standards established by the agency for measuring a bidder's ability to perform the contract. Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 C.P.D. ¶ 403.

Quality asserts that the ICC operating authority provision is a definitive responsibility criterion, a prerequisite to finding M.R.W./Zenith responsible, since the provision asks a bidder to identify its ICC operating authority by listing the ICC authorization number, and the FAR required the solicitation to contain the clause. We disagree.

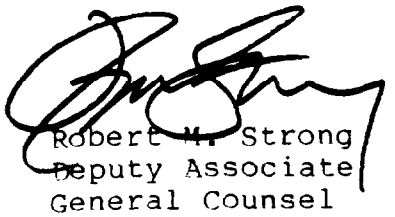
We considered this issue in Joiner Van and Storage Service, Inc., B-218438, Apr. 24, 1985, 85-1 C.P.D. ¶ 469, and specifically found that the FAR, § 52.247-2 clause does not constitute a definitive responsibility criterion which must be met to qualify for award. The reason is that, rather than requiring ICC authority, the clause only requires bidders to indicate whether they hold authorization from the ICC or other regulatory body and, if so, to provide the authorization number. We concluded that the clause was merely a listing requirement to provide information for the contracting officer's convenience. We see no reason for reaching a different conclusion here.

Quality argues that our decision in Joiner is incorrect and thus should not be followed because it ignores and is inconsistent with our prior decision in Sillco, Inc., B-188026, Apr. 29, 1977, 77-1 C.P.D. ¶ 296, which Quality interprets as holding that a similar solicitation provision calling for the listing of ICC operating authority was a definitive responsibility criterion. The clause in that case, however, is distinguishable in two material respects. First, whereas FAR, § 52.247-2 calls for a listing of ICC or other regulatory authority, suggesting no intent to require ICC authority in particular, the provision in Sillco specified that the bidder list its ICC operating authority, indicating a more specific requirement for ICC authority. Second, unlike the provision in Sillco, FAR, § 52.247-2 calls for the bidder, upon request, to furnish copies of its authorization "before moving materials under any contract." No language in FAR, § 52.247-2 requires the authorization to be furnished before award. This language is more indicative of a performance requirement, i.e., a requirement that needs be met only by the contractor, than a precondition to receiving the award. See General Offshore Corp., B-224452, Oct. 16, 1986, 86-2 C.P.D. ¶ 437.

While Joiner does not cite Sillco, it does cite Chipman Van & Storage, Inc., B-188917, Oct. 18, 1977, 77-2 C.P.D. ¶ 299, which in turn includes a discussion of the ICC's decision in Bud's Moving & Storage, Inc., Petition for Declaratory Order, 126 M.C.C. 56 (1977). It was this ICC decision on which our decision in Sillco was predicated. Thus, contrary to Quality's assertion, our decision in Joiner did not ignore the Sillco rationale. Rather, it clearly found the circumstances distinguishable.

We conclude that FAR, § 52.247-2 is simply a listing requirement, to aid the contracting officer in determining

responsibility, and not a definitive responsibility criterion. Quality's protest is dismissed.



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