

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

FILE: B-186062

DATE: September 10, 1976

MATTER OF: Airways Rent-A-Car

61459

98063

**DIGEST:**

While it was improper to make award to bidder which greatly exceeded IFB requirement that dispatching point be located not more than 15 minutes from terminal, GAO does not recommend contract be terminated for convenience since at time of award on March 1, 1976, waiver of requirement was permitted in decisions later overruled in Haughton Elevator Division, Reliance Electric Company, B-184865, May 3, 1976, 55 Comp. Gen. 1051, 76-1 CPD 294. In future procurements definitive criteria of responsibility such as 15-minute requirement should be strictly enforced.

Airways Rent-A-Car (Airways) protests award of a contract to American International Rent-A-Car (A.I.), the low bidder under invitation for bids (IFB) No. 3FP-B6-R-3813 issued by the Federal Supply Service (FSS), General Services Administration, Region III. The IFB, issued November 12, 1975, requested the furnishing of motor vehicle rental services without drivers for Government travelers on official business. The IFB, on page 5, states that the "Contractor's dispatching point must be located not more than fifteen minutes travel time from the passenger terminal." The passenger terminal referred to is located at Andrews Air Force Base near Washington, D.C.

A.I.'s dispatching point as designated by it in the IFB and at the time of commencement of the contract on March 1, 1976, was 607 S. Camp Meade Road, Baltimore, Maryland, which is considerably further than the 15 minutes required by the IFB.

By letter dated January 12, 1976, to the FSS, Airways contended that A.I. does not operate from a dispatching point within 15 minutes' travel time from the passenger terminal. This contention was taken into consideration when a plant facilities report was requested. The completed report dated February 6, 1976, stated that A.I. was

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"capable of performing." The report noted that A.I. has a "tentative agreement to purchase or rent property within the required travel time from Andrews Air Force Base, within two weeks of contract award." Based on a satisfactory financial responsibility check and the plant facilities report, A.I. was determined to be the lowest responsive, responsible bidder and was awarded the contract on March 1, 1976, on which date performance was to begin.

On March 12, 1976, because performance had not begun as required, a 10-day cure letter was sent to A.I. advising it to correct the deficiency which was present at time of award, namely its failure to have a dispatching point within 15 minutes of the terminal at Andrews Air Force Base. On March 24, 1976, GSA was advised that A.I. had moved into the terminal at Andrews Air Force Base. On March 30, 1976, A.I. advised GSA that its dispatching point was now within the distance required by the contract.

On March 11, 1976, a protest by Airways was received in our Office. Airways contends that since A.I. submitted a bid indicating a dispatching point located further than 15 minutes from the terminal, its bid was nonresponsive and therefore it could not be corrected after bid opening. It is also contended that even if the requirement relates to responsibility, compliance with which may be established after bid opening, such principle should not apply here since the nonconformance was apparent on the face of the bid. Counsel for Airways also asserts that A.I. gained entrance to the air terminal due to the intervention of GSA with the base commander. Thus, it is Airways' view that the Government took it upon itself to cure the bid.

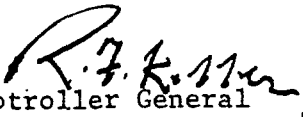
Our Office has characterized requirements that a bidder have facilities located within a certain area as relating to a bidder's responsibility, not the responsiveness of a bid. See Plattsburgh Laundry and Dry Cleaning Corp., 54 Comp. Gen. 29 (1974), 74-2 CPD 27. The time requirement of the IFB in the instant case, while distinguishable from a geographic limitation such as found in 54 Comp. Gen. 29, supra, is sufficiently similar to be considered as relating to bidder responsibility. Oceanside Mortuary, B-186204, July 23, 1976, 76-2 CPD 74. Since Airways' protest concerns GSA's affirmative determination of A.I.'s responsibility, our review of

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such determination is appropriate as the solicitation contains definitive responsibility criteria which allegedly have not been applied. Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376; Oscar Holmes & Son, Inc.; Blue Ribbon Refuse Removal, Inc., B-184099, October 24, 1975, 75-2 CPD 251.

In the past, we have held that even though a bidder did not literally meet the prescribed criteria of responsibility set forth in a solicitation, a proper award could be made to that bidder provided the agency determined the bidder to be otherwise responsible. However, those cases were overruled in our decision in Haughton Elevator Division, Reliance Electric Company, B-184865, May 3, 1976, 55 Comp. Gen. \_\_\_\_\_, 76-1 CPD 294, which was issued after the award in the instant case. In Haughton, we stated that meeting definitive criteria of responsibility is a prerequisite to an affirmative determination of responsibility. Further, we said that to waive such criteria as the contracting officer sees fit is misleading and prejudicial to other bidders who have a right to rely on the wording of the solicitation and thus to reasonably anticipate the scope of competition for award. Since A.I. had not complied with the definitive criteria by the time performance was to begin, the protest is sustained.

While the protest is sustained, we do not believe the award made in the instant case should be disturbed since it was consistent with the past decisions of our Office which were subsequently overruled in Haughton. Oceanside Mortuary, supra. In the future, however, we expect procuring agencies to adhere strictly to definitive responsibility criteria such as the 15-minute limitation in this case.

  
Acting Comptroller General  
of the United States