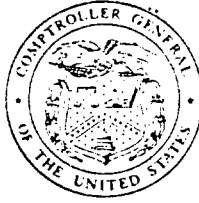


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DECISION



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

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FILE: B-192799

DATE: January 10, 1979

MATTER OF: School Transportation Co., Inc.

DIGEST:

9 Allegation that contractor is performing school transportation contract with buses ^{not} that do not meet ^{ing} certain specific provisions of IFB is matter of contract administration and not for resolution under bid protest procedures.

School Transportation Co., Inc. (School), protests the award of a contract made to James M. Smith, Inc. (Smith), under solicitation number DABTO1-78-B-0077 for the transportation of children residing on the Fort Rucker Military Reservation to nearby schools.

School contends that Smith's bid was nonresponsive; that Smith was not responsible; and that Smith is performing the contract with vehicles that do not comply with certain provisions of the invitation for bids (IFB).

School's protest centers on Smith's alleged failure to comply with IFB Section "F", item F3, which provides:

"The contractor agrees to furnish and operate school buses not more than ten years old*, meeting specifications and standards as established by state and local regulations (which can be reviewed at Transportation Office, Fort Rucker, Alabama). Buses used for transportation of students to Carroll High, and East Gate will contain a minimum of 15 inches of seating space per student, and for on post schools a minimum of 13 inches of seating space per student. (* model year)"

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School contends that Smith should have been found nonresponsive and its bid nonresponsive because Smith, allegedly in violation of section "F", item F3, did not have buses meeting specifications and standards established by State and local regulations. Specifically, School maintains that the State of Alabama Department of Education specifications for school buses require that buses be equipped with air brakes and that Smith has several buses which do not meet this requirement. Further, School contends that Smith is performing the contract with buses more than 10 years old and with seating capacities less than the required minimum.

There is a definite distinction between questions related to bid responsiveness and those concerned with bidder responsibility. As we stated in 49 Comp. Gen. 553 (1970), at page 556:

"* * * The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof. Unless something on the face of the bid, or specifically a part thereof, either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the invitation, it is responsive * * *."

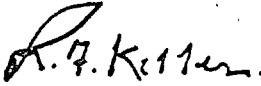
Responsibility, on the other hand, concerns a bidder's ability to perform its obligations under the terms of its submitted bid. New Haven Ambulance Service, Inc., B-190223, March 22, 1978, 78-1 CPD 225.

In the instant case, nothing on the face of Smith's bid or specifically made a part thereof limited, reduced or modified its obligation under the IFB. The protester questions Smith's ability, and not its obligation, to comply with the IFB in light of Smith's alleged failure to meet the requirements for school buses. This, as noted above, is an issue of responsibility.

This Office does not review affirmative determinations of responsibility except where the protester alleges fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Contra Costa Electric, Inc., B-190916, April 5, 1978, 78-1 CPD 268; Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Neither exception applies here.

Whether Smith is in fact performing in accordance with the contract requirements is a matter of contract administration. Contract administration is the function and responsibility of the procuring activity and matters relating thereto are not for resolution under our Bid Protest Procedures, 4 C.F.R. part 20 (1978). SMI (Watertown), Inc., B-188174, February 8, 1978, 77-1 CPD 98.

The protest is denied.


Deputy Comptroller General
of the United States