

DECISION



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

FILE: B-196935

DATE: December 19, 1979

MATTER OF: Ronald Campbell Company CNG 0295T

[Protest Alleging Solicitation Language Allows Bias and Arbitrary Discrimination]  
DIGEST:

1. Government is not required to equalize competition by eliminating requirement that contractor provide toll-free telephone line or accept collect telephone calls from contracting officer. Protest is denied where protester neither questions legitimacy of requirement nor presents evidence to suggest competitive advantage to local firms arises as result of preference or unfair Government action.
2. Contracting officer is required under procurement regulation to consider whether prospective contractor has "adequate" financial resources, "satisfactory" record of performance, and "satisfactory record of integrity." Mere speculation that contracting officer might abuse discretion and arbitrarily discriminate against protester when making responsibility determination is dismissed.
3. Where protester fails to demonstrate that procuring agency lacks reasonable basis for solicitation requirement, GAO will not question agency's determination of what are its actual needs.
4. Protest is summarily denied where it is clear from protester's initial submission that it is not entitled to relief.

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2 Ronald Campbell Company (Campbell) protests the terms of invitation for bids (IFB) DADA13-80-B-0001, issued by the Department of the Army for journal subscriptions. In Campbell's view some of the solicitation's language is drafted in such a manner as to permit bias and arbitrary discrimination. 20

Campbell initially complains that a provision in the solicitation which requires the successful contractor to provide a toll-free telephone line or accept collect telephone calls "for special claim follow-ups" is biased in favor of local bidders. Campbell does not question the Army's need for the provision but rather maintains the provision is economically unfair to out-of-town contractors such as itself who would incur additional costs to comply with the requirement.

Contrary to Campbell's assertion, we believe this provision does not involve any element of unfair competition. We have long recognized that certain firms may enjoy a competitive advantage by virtue of their own particular circumstances or as a result of Federal or other public programs. 53 Comp. Gen. 86, 88 (1973). We know of no requirement for equalizing competition by taking into consideration these types of advantages, nor do we know of any possible way in which such equalization could be effected. Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. The test to be applied is whether the competitive advantage enjoyed by a particular firm or class of firms arises as a result of preference or unfair action by the Government, Aerospace Engineering Services Corporation, supra. Campbell presents no such evidence here.

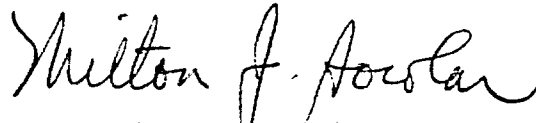
Campbell also requests that we direct the Army to alter a provision in the solicitation requiring bidders to possess experience, adequate financial resources, and a satisfactory record of integrity. The protester maintains that the words "satisfactory," "experience," or "adequate" are nebulous and create the risk that the contracting officer might abuse his discretionary powers and arbitrarily discriminate against bidders in order to select the firm which he desires to receive award.

Campbell does not present any evidence of bias or favoritism beyond the unsupported allegation that a potential for favoritism exists, and accordingly the record provides no basis to support Campbell's speculative argument. The Public Research Institute of the Center for Naval Analyses of the University of Rochester, B-187639, August 15, 1977, 77-2 CPD 116. Furthermore, Defense Acquisition Regulation (DAR) 1-903 (1976 ed.) sets forth minimum responsibility criteria which a prospective contractor must meet before award can be made to it, including having "adequate financial resources," "a satisfactory record of performance," and "a satisfactory record of integrity." A contracting officer must make an affirmative determination that the prospective contractor meets these and other criteria before an award can be made to a firm. DAR 1-904.1. This portion of the protest is dismissed as speculative.

Finally, Campbell requests that we direct the Army to be less restrictive concerning the frequency of the adjustment payments permitted for revised publishers' prices. Our Office has recognized that Government procurement officials, who are familiar with the condition under which supplies, equipment, or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the Government's actual needs. Consequently, we will not question an agency's determination of what its actual needs are unless it is clear that the determination has no reasonable basis. Arista Devices Corp., B-194393, September 5, 1979, 79-2 CPD 177. Campbell merely requests more frequent adjustment payments and has not demonstrated that the Army's requirement is arbitrary or lacks a reasonable administrative reason. Arista Devices Corp., supra.

We have decided this case on the basis of the protester's submission because it is clear that the protester is not entitled to relief. Davlynne, Inc. B-195962, October 31, 1979, 79-2 CPD 311.

The protest is partially dismissed and summarily denied as to the remainder.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General  
of the United States