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**DECISION**



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

FILE: B-205212

DATE: November 24, 1981

MATTER OF: Ron's Sanitation Service

**DIGEST:**

1. The mere fact that certain potential bidders did not receive copies of a solicitation does not constitute a violation of the rules governing advertised procurements where there is no evidence that the competition obtained was not adequate.
2. There is no requirement that advertised procurements be publicized through advertisements in local newspapers.
3. Agency's delay of the award and commencement of performance of a contract to allow a bidder time to obtain a county license was not improper since the delays (one and three days, respectively) were reasonable and did not require the agency to compromise its needs.
4. Where a solicitation does not contain an express requirement that offerors hold a particular license or permit, the contracting officer need not consider whether such licensing has been obtained in determining the offeror's eligibility for award; an award made to an offeror not possessing a local license is not improper under these circumstances.

Ron's Sanitation Service protests the award of a contract to Kanabec Disposal Service, under invitation for bids (IFB) No. 147-086, issued by the Department of Justice (DOJ) for garbage and trash removal services at the Federal Correctional Institution, Sandstone, Minnesota. Ron's raises three bases of protest: the procurement was not properly advertised; the contract

award was improperly delayed; and Kanabec did not have a Pine County license to collect solid waste, as required by county law. For the reasons discussed below, we deny the protest as to all grounds.

Ron's states that although the solicitation indicated that this was an advertised procurement, not all of the trash haulers in Pine County received bid forms, and "it was never advertised in any of the surrounding area newspapers." Ron's apparently believes that the procurement was defective for these reasons. A formally advertised procurement is one based on competitive, sealed bids which are publicly opened. Although parties wishing to compete for those awards must have the opportunity to do so, the solicitation for a given procurement need not be furnished to every potential bidder. Rather, the regulations require only that bids be solicited from all qualified sources "deemed necessary by the contracting officer to assure full and free competition." Federal Procurement Regulations (FPR) § 1-2.102(a). See also § 1-2.203-1. The mere fact that certain trash haulers in Pine County may not have received copies of the solicitation here thus does not, by itself, constitute a violation of the rules governing advertised procurements; the determining factor is whether the competition obtained was adequate. There is no indication that the competition here was not adequate.

As for the agency's failure to advertise the procurement in local newspapers, we note that there is no requirement that procurements be publicized in this manner. See FPR § 1-2.203-3. In fact, a contracting officer must have written authorization from the head of the department before placing an advertisement in a newspaper. 44 U.S.C. § 3702 (1976). In any event, Ron's submitted a bid on this procurement, and has not shown how it was prejudiced by the means chosen for publicizing of the solicitation.

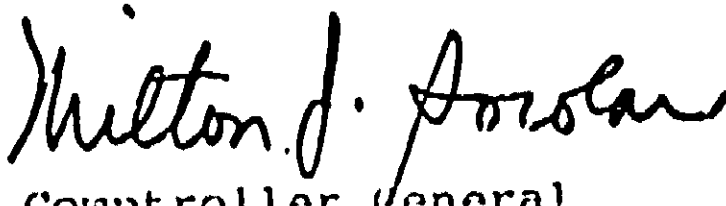
Regarding the protester's second contention, we have recognized a number of situations where an agency may hold up awarding a contract to allow a particular bidder to qualify for award. Bruno-New York Industries Corp., B-196185, June 5, 1980, 80-1 CPD 388; Ver-Val Enterprises, Inc., B-198076, March 25, 1980, 80-1 CPD 223. We ordinarily will not object to a reasonable delay which does not require

the agency to compromise its needs. Bruno-New York Industries Corp., supra. Here, the protester states the award was delayed from October 1 to October 2, and correspondence to the protester indicates that performance itself was delayed until October 6 to allow Kanabec time to obtain Pine County licensing. This time span covered a weekend, so the actual delay in performance was three working days. We do not think three days constitutes an undue delay and the agency apparently had no trouble meeting its needs. Under these circumstances, the delay by DOJ was unobjectionable.

Ron's final contention--the award was improper because Kanabec did not possess a trash hauling license, required by Pine County law, at either the time of bid opening or award--is also without merit. We have held that unless a solicitation contains an express requirement that an offeror hold a particular license or permit, it is simply the contractor's responsibility to obtain whatever licenses may be necessary to perform the contract. Jekyll Towing and Marine Services Corporation, E-199199, December 2, 1980, 80-2 CPD 413. Absent such an express requirement, licensing is not a matter of responsiveness or responsibility and the contracting officer need not consider whether licensing has been obtained in determining the offeror's eligibility for award. Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132; B&W Stat Laboratory, Inc., B-195391, March 10, 1980, 80-1 CPD 184. There is no indication in Ron's submission that the solicitation here specifically required Pine County licensing or that award was otherwise predicated on obtaining a license. We thus cannot conclude that DOJ acted improperly in awarding the contract to Kanabec before that firm obtained a Pine County trash hauling license.

Where, as here, it is clear from a protester's initial submission that its protest is without legal merit, we will decide the matter on the basis of that submission without obtaining a report from the procuring activity. Alan Scott Industries, B-201743, et al., March 3, 1981, E1-1 CPD 159.

The protest is denied.

for   
Comptroller General  
of the United States