

Kaufman

DECISION



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

FILE: B-220085.2

DATE: February 19, 1986

MATTER OF: Descomp Inc.

DIGEST:

1. Allegation that awardee's bid should have been found nonresponsive because awardee's facility is not located within a 110 mile radius of the Capitol is without merit where solicitation only specified that pickup and delivery locations must be within that geographic area.
2. Protest alleging that agency should not have eliminated a geographic restriction is without merit where agency reasonably determines that its needs could be met without imposing such a restriction and agency determines that requirement constitutes an unjustified restriction on competition.
3. Whether an awardee performs in compliance with contract requirements is a matter of contract administration not for consideration under Bid Protest Regulations.

Descomp, Inc. (Descomp) protests the award of a contract for data entry services to Key punch, Inc. (Key punch) under Department of Housing and Urban Development (HUD) invitation for bids (IFB) No. HC-14255. Descomp, the second low bidder, alleges that HUD has misinterpreted the IFB's geographic restriction and that, based on a proper interpretation, the Key punch bid is nonresponsive because the Key punch facility is not located within the required geographic area. We deny the protest.

While the protest was pending in our Office, Descomp filed suit against the government in the United States District Court for the District of Delaware (Civil Action No. 85-575-JJF). The bases for the suit are substantially the same as those presented to our Office in the protest. The court, by order of October 1, 1985, denied Descomp's motion for a temporary restraining order. We dismissed the protest on October 17, 1985 because the court had not

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indicated an interest in our decision. HUD awarded the contract to Key punch the next day. Subsequently, in an order dated October 21, 1985, the court requested that we decide Descomp's bid protest.

Descomp was the incumbent contractor and has provided HUD with the required data entry services since approximately 1971. The last contract for this requirement was awarded to Descomp in 1982 pursuant to Request for Proposals (RFP) No. HC-10735. That RFP, and previous solicitations, all contained a similar mandatory geographical restriction which was stated as follows:

"IV. Mandatory Requirement

All services required shall be performed within a 110 mile radius of the United States Capitol Building, Washington, D.C.

Due to the Department's need for rapid turnaround, in some instances, and the need for close liaison between the contractor and government personnel, the geographical limitation is mandatory and represents actual requirements of the work to be performed."

The RFP also required pickup and delivery locations to be within the District of Columbia. In contrast, the current IFB contained only the following requirement:

"(2) Pickup and delivery locations will be within 110 miles of the Capitol, and in accordance with instructions received from GTR/GTM."

Descomp contends that, although HUD had replaced the geographic restriction with a requirement that only pickup and delivery locations be within a 110 mile radius of the Capitol, HUD nevertheless intended to continue the mandatory geographic restriction as applied in previous solicitations. Descomp argues that HUD's requirements have not changed from past years and that there was no rational basis to eliminate the geographic restriction. Descomp claims that HUD's actions are based on a misinterpretation of the current IFB requirement, and since Key punch's facility is located more than 110 miles from the Capitol, Key punch should have been declared nonresponsive.

We find Descomp's protest without merit. The language of the current IFB clearly does not require that a contractor's facility be located within 110 miles of the Capitol, but only that pickup and delivery locations be located within that area. In addition, the record shows that HUD intentionally removed the geographic restriction found in previous solicitations and inserted the performance requirement in its place because the agency believed the geographic restriction was unnecessary and constituted an unjustified restriction on full and fair competition. Accordingly, we see no evidence that HUD intended to apply the same geographic restriction used in past years, and, in view of the plain language of the requirement, HUD's interpretation of the clause to mean that only pickup and delivery locations must be within a 110 mile radius of the Capitol is clearly reasonable.^{1/}

Furthermore, we disagree with Descomp's contention that the geographical restriction as interpreted in previous RFPs should be imposed to ensure satisfactory performance. First, it is well established that it is the responsibility of the contracting agency to determine its minimum needs and the best method to accommodate these needs. Eaton Leonard Corp., B-215593, Jan. 17, 1985, 85-1 CPD ¶ 47. Second, we note that the basic principle underlying federal procurement is that competition is to be maximized; providing all qualified sources an equal opportunity to compete for government contracts. Joint Committee on Printing of the Congress of the United States--Request for Advance Decision, 64 Comp. Gen. 160 (1984), 85-1 CPD ¶ 17. HUD determined that its needs could be met without imposing the broad geographic restriction contained in prior solicitations. This provides no basis for legal objection since the law requires the use of the least restrictive procurement

^{1/} HUD also argues that Descomp's protest is untimely since the change was apparent from the solicitation and therefore should have been protested prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1985). We agree. Although Descomp claims that it was unaware of HUD's interpretation of this clause until a later date, the wording of the requirement in the current IFB should have placed Descomp on notice of the proposed change. In view of the court's request for our opinion on the merits, however, we have discussed the protest issues. 4 C.F.R. § 21.9.

approach possible. In fact, for this reason an assertion that a solicitation should be made more restrictive is generally not reviewable by this Office. Olson and Assocs. Engineering, Inc., B-215742, July 30, 1984, 84-2 CPD ¶ 129

Lastly, we note that Descomp complains that Keypunch has been unable or unwilling to fulfill the "24-hour turn-around" terms of the contract and that HUD has knowingly allowed the condition to continue. We point out that there is no evidence that the Keypunch bid took any exception to this requirement. Moreover, whether a bidder performs a contract in compliance with contract requirements is a matter of contract administration and not for consideration under our Bid Protest Regulations. Meditech, Inc., B-217428, Jan. 16, 1985, 85-1 CPD ¶ 45.

The protest is denied.

for *Seymour E. Van Cleve*
Harry R. Van Cleve
General Counsel