Moorhouse

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Intercontinental Equipment, Inc.

File: B-224824

Date: October 10, 1986

DIGEST

Where the solicitation's U.S.-flag vessel preference clause had no bearing upon the evaluation of competing proposals, the question of the awardee's ultimate compliance with the terms of that clause constitutes a matter of contract administration, which is the responsibility of the contracting agency and not the General Accounting Office.

DECISION

Intercontinental Equipment, Inc. (ICE) protests the award of a contract to Titan Intermodal Industries, Inc. (Titan) under request for proposals (RFP) No. N00033-86-R-3064, issued by the Military Sealift Command (MSC), Department of the Navy. ICE complains that the agency improperly interpreted and applied the solicitation's U.S.-flag vessel preference clause with respect to the evaluation of offers so as to exclude the firm from an award to which it was otherwise entitled.

We dismiss the protest.

The RFP sought offers to furnish 104 new or used steel dry cargo freight containers. The solicitation incorporated the clause "Preference for Privately Owned U.S.-Flag Commercial Vessels" (Alternate I- APR 1984). This clause, which is set forth in the Federal Acquisition Regulation, 48 C.F.R. § 52.247-64 (1985), and implements the Cargo Preference Act of 1954, 46 U.S.C. app. § 1241(b) (Supp. III 1985), provides that the contractor is required to use privately owned U.S.-flag commercial vessels in the ocean transportation of any supplies to be furnished under the contract, unless such vessels are not available for timely shipment at fair and reasonable rates. In that situation, the contractor is to notify the contracting officer and either request authorization to ship in foreign-flag vessels or designation of available U.S.-flag vessels. If authorization is given to

ship in foreign-flag vessels, the contract price is to be equitably adjusted on the basis of the difference between the costs of shipping the supplies in U.S.-flag and foreign-flag vessels.

We fail to see how this clause had any direct bearing upon the evaluation of competing proposals. The award was based on the lowest-priced technically acceptable proposal, and ICE had made no allegation that Titan, in its offer, took any exception to the conditions of the clause. Thus, ICE has presented no basis upon which we could consider that the award was improper.

The essence of ICE's complaint is that Titan has violated the clause by transporting the items to be furnished under its contract in foreign-flag vessels. ICE's protest documents indicate that MSC takes the position, with which the protester disagrees, that Titan was not required to abide by the terms of the clause because it was not shipping end items to the United States, but "components" of the end items it would furnish under the contract. ICE provides further documentation indicating that the correctness of MSC's interpretation of the cargo preference clause as applying only to end items is disputed by the Maritime Administration.[1/]

This does not raise a matter that we will review. The question of Titan's lack of compliance with the preference clause clearly involves administration of the contract. Contract administration is the responsibility of the agency, and is not considered by this Office under the bid protest function. 4 C.F.R. § 21.3(f)(1) (1986); see also Descomp Inc., B-220085.2, Feb. 19, 1986, 86-1 CPD ¶ 172.

The protest is dismissed.

Ronald Berger
Deputy Associate
General Counsel

1/ The Secretary of Transportation, through the Maritime Administration, is authorized by the Cargo Preference Act to review the administration of the Act by the various federal agencies. 46 U.S.C. app. § 1241(b)(2) (Supp. III 1985).