



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Burnham Service Company

File: B-254525

Date: November 17, 1993

Stephen J. Fallick for the protester,
Kathleen D. Martin, Esq., Department of State, for the
agency,
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency properly rejected from consideration for award a bid which did not offer to perform within the geographically restricted area as provided in the invitation for bids.

DECISION

Burnham Service Company protests the rejection of its bid under invitation for bids (IFB) No. S-OPRAQ-93-B-0012, issued by the Department of State for warehousing, shipping and receiving services to be performed in the commercial zones of Baltimore, Maryland, and Seattle, Washington. Burnham asserts that State improperly found its bid for the Baltimore commercial zone to be nonresponsive because the geographic location of its facilities is in Upper Marlboro, Maryland.

We deny the protest.

State issued the IFB on April 16, 1993, contemplating award of two firm, fixed-price, indefinite quantity contracts--one for Baltimore and the other for Seattle. Section L.4 of the solicitation imposed the following geographic limitation on the location of bidders' facilities:

"To receive consideration for award, all [b]idders must maintain a place of business from which all services will be rendered . . . FOR THE BALTIMORE CONTRACT in the Baltimore, Maryland Commercial Zone, the area as defined by the Interstate Commerce Commission in 49 C.F.R. Part 1048 - COMMERCIAL ZONES." [Emphasis in original.]

The text of 49 C.F.R. Part 1048 (1992) includes particularized definitions of commercial zones for specified cities, 49 C.F.R. §§ 1048.1 through 1048.19, and a general definition for all other municipalities not otherwise specifically identified, 49 C.F.R. § 1048.101. The terms of this general definition vary by the population of the municipality in question. For Baltimore, a municipality with no particularized commercial zone specified in 48 C.F.R. part 1048 and one which has a municipal population between 500,000 and 1 million, the commercial zone is defined by 48 C.F.R. § 1048.101 as:

"(a) The municipality itself, hereinafter called the base municipality;

"(b) All municipalities which are contiguous to the base municipality;

"(c) All other municipalities and all unincorporated area within the United States which are adjacent to the base municipality: . . .

(6) When the base municipality has a population of 500,000 but less than 1 million, all unincorporated areas within 15 miles of its corporate limits and all of any other municipality any part of which is within 15 miles of the corporate limits of the base municipality . . . and

"(d) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any municipality adjacent thereto which is included in the commercial zone of such base municipality under the provisions of paragraph (c) of this section."

Four bidders submitted bids by bid opening on June 10. Burnham submitted the lowest-priced bid for the Baltimore contract. In its bid, Burnham indicated that the facilities it would use for the Baltimore contract are in Upper Marlboro, which is located approximately 34 miles from the city limits of Baltimore. State determined that these facilities were located outside of the Baltimore commercial zone and rejected the bid as nonresponsive.

On August 17, Burnham protested the rejection of its bid, alleging that State's determination that Burnham's facilities did not meet the geographic limitation was contrary to the terms of the geographic restriction as stated in the IFB. We disagree.

The IFB stated that, to be considered for award, a bidder must "maintain a place of business from which all services will be rendered . . . in the Baltimore, Maryland Commercial Zone" and incorporated by reference the definition stated previously of the commercial zone given at 49 C.F.R. § 1048.101. State asserts, and Burnham does not deny, that Burnham's Upper Marlboro facilities are approximately 34 miles from the municipal limits of Baltimore, which is well beyond the Baltimore commercial zone as defined at 49 C.F.R. § 1048.101. Our review confirms that Burnham's facilities are outside the Baltimore commercial zone. Since Burnham does not satisfy the IFB's stated geographical limitation, its bid was properly eliminated from award consideration. See 53 Comp. Gen. 102 (1973); Airways Rent-A-Car, B-186082, Sept. 10, 1976, 76-2 CPD ¶ 232.

Burnham states that it relied on an oral interpretation allegedly given by State that the geographic limitation actually included the Baltimore/Washington metropolitan area, in which case it would meet the geographic limitation. However, the language of the definition of the Baltimore commercial zone is clear and specific and does not include the Baltimore/Washington metropolitan area. Furthermore, the IFB incorporated by reference the provision at FAR § 52.214-6 "Explanation to Prospective Bidders," which states that "[o]ral explanations or instructions given before the award of a contract will not be binding." It is well established that when this provision is included in the solicitation, a bidder relies on oral explanations--especially those which are inconsistent with the solicitation's express provisions--at its own risk. Camar Corp., B-248485, Aug. 31, 1992, 92-2 CPD ¶ 140.

Alternatively, Burnham alleges that the geographic limitation is unduly restrictive of competition. It is well established that a solicitation may impose legitimate geographic restrictions on competition. 53 Comp. Gen. supra. To the extent that Burnham now alleges that the geographic limitation as stated here is unduly restrictive of competition or ambiguously defined, it is alleging an impropriety apparent on the face of the solicitation which, to be considered timely, it should have protested prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1993).

The protest is denied.



for James F. Hinchman
General Counsel