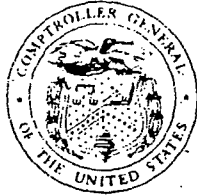


DECISION



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

D.
798

80-2 CPD 73

FILE: B197236 *et al.*

DATE: July 28, 1980

B-197236.2; B-197236.3

MATTER OF: Auto Discount Rent-N-Drive Systems, Inc;
Jerry's U-Drive, Inc.; and George Corporation

DIGEST:

1. Statement in "Method of Award" clause in IFB for car rental services that "to be considered for award" bidder must demonstrate that it has dispatching point located within 15 minutes travel time from passenger terminal is definitive criterion of responsibility. Upon review, GAO finds contracting officer acted reasonably in concluding awardee met criterion.
2. Questions of whether firms have made adequate provisions for obtaining required number and type of low-mileage rental cars and for "coverage" of rental operations during early morning hours are issues of responsibility requiring exercise of judgment by contracting officer and do not involve definitive responsibility matters which GAO will review.

These three protests pertain to different line items of solicitation No. 7CF-51842/P5/7AV issued by the Federal Supply Service, General Services Administration (GSA) for bids to provide GSA's requirements for rental vehicles throughout the United States. Although each protest concerns an award or pending award under a line item for a different location, the issues they raise overlap and they have been combined for purposes of decision. For reasons discussed below, one protest is denied; the other two are denied in part and dismissed in part.

Each of the three protesters has, in effect, questioned its competitor's responsibility: that is, whether that firm has the resources and ability to satisfactorily perform the contract. For many years, our Office

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reviewed protests involving contracting officers' affirmative determinations of responsibility. However, we discontinued that practice in 1974 in recognition of the fact that responsibility determinations to a large degree involved matters of business judgment which would be overturned only if the protester were able to meet the high standard of showing that the contracting officer acted arbitrarily. In view of the discretion afforded the contracting officer and the practical difficulties inherent in proving arbitrary action, we concluded that "no significant purpose would be served by our continued review of such matters." Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

There are two exceptions to this rule. We will review a contracting officer's affirmative determination of a bidder's responsibility if the contracting officer's actions are tantamount to fraud, Central Metal Products, supra, or bad faith, see Clifton Precision Division of Litton Systems, Inc., B-190081, May 9, 1978, 78-1 CPD 348; Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37, or when the question of responsibility revolves around the bidder's meeting or failing to meet specific and objective responsibility criteria expressed in the solicitation. Yardney Electric Corp., 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

Since there is no question of fraud or bad faith in this case, our review of the protesters' allegations depends upon whether they concern the application of definitive responsibility criteria. If they do, we will review the contracting officer's determination; if they do not, we will not.

The first protest (B-197236) that of Auto Discount Rent-N-Drive Systems, Inc. (Auto Discount), concerns the IFB's "Method of Award" provision, which states in part:

"To be considered for award, an offeror must have adequate resources to carry out the terms and conditions of the contract * * * to include a dispatching point located not more than 15 minutes travel time from airport passenger terminal, bus terminal or railroad station. Offerors must demonstrate compliance with this requirement * * *."

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Clearly, this requirement--that a bidder demonstrate that its dispatching point is within 15 minutes travel time of the terminal--is a definitive responsibility criterion, and the contracting officer could not properly find a bidder responsible in the absence of such a demonstration. See Oceanside Mortuary, B-186204, July 23, 1976, 76-2 CPD 74. Since the 15 minute requirement is a definitive responsibility criterion, we will review the Auto Discount protest.

Auto Discount contends that the proposed awardee, Americar Rental Systems (Americar), does not have a dispatch office within 15 minutes of the railroad and bus stations in Washington, D.C. Auto Discount states that on 9 separate days it conducted test runs between Americar's dispatch office in Arlington, Virginia, and the railroad and bus stations and these tests show average driving times exceeding 15 minutes by a minimum of 4 minutes and maximum of 11 minutes.

GSA states Americar, the incumbent contractor, has a satisfactory performance record under its current contract which has a similar location requirement. It also states the contracting officer confirmed Americar's performance record and obtained from the GSA regional office in Washington, D.C., verification that Americar's dispatch office is in compliance with the solicitation's requirements. In addition, after this protest was filed, GSA made a test run between the dispatch office and the terminals and found the distances and driving times to be 5.3 miles and 12.5 minutes from the railroad station and 4.2 miles and 8 minutes from one of the bus stations.

Although Auto Discount has supported its allegations of noncompliance by Americar with the results of its own test runs, the agency contradicts these results and submits information showing compliance. As the evidence submitted by Auto Discount could be considered self-serving in nature, it does not provide a sufficient basis for this Office to conclude the contracting officer would be unreasonable in relying upon information gathered by her agency in preference to that submitted by Auto Discount. See Southern Wood Piedmont Company--Reconsideration, B-194380, July 27, 1979, 79-2 CPD 58; Consolidated Service, Inc., B-186199, November 21, 1977, 77-2 CPD 386. Auto Discount's protest is therefore denied.

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The other two protests concerning this solicitation are sufficiently similar that we shall discuss them together. Jerry's U-Drive, Inc., (Jerry's) protests (B-197236.2) award of a contract to Bremerton Rental and Leasing, Inc., d.b.a. Payless Car Rental (Payless) for the vehicle rental requirements at the Seattle-Tacoma International Airport. Jerry's contends Payless is not open 24 hours a day, 7 days a week, has insufficient personnel, does not have and cannot be expected to have the required number and type of low-mileage late model cars and that its past performance record is poor. George Corporation (George) protests (B-197236.3) the award of a contract to Service Corporation d.b.a. Payless Car Rental (Payless) for the vehicle rental requirements in Spokane, Washington. George contends that Payless is not open 24 hours a day and, therefore, does not comply with the requirements of the solicitation.

Both of these protests concern specification provisions which prescribe how the contract is to be performed. Paragraph g of clause CR-9, "Arrangement for Delivery and Pickup of Vehicle" states:

"The services called for in this solicitation shall be available to coincide with terminal facilities service hours during the term of any resulting contract. The contractor's place of business or dispatching point shall be open during the terminal facilities service hours, and the contractor shall have on duty sufficient personnel to provide the services required by the contract. If the terminal facilities are open to the public 24 hours a day, 7 days a week, then the contractor must have coverage of his operation 24 hours a day, 7 days a week."

In addition, clause CR-16, "Vehicle Classes, Specifications and Requirements", sets forth the type of vehicles to be rented, their condition and required accessories.

Although each of these protests concerns a different location and somewhat different circumstances, in essence they are the same. Each protester maintains that its competitor does not offer around-the-clock "coverage" because during the early morning hours its office is

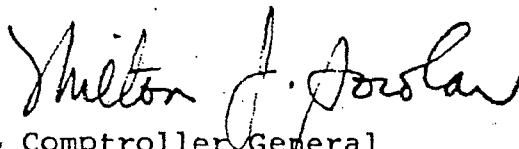
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locked but service is available on an "on-call" basis. For the reasons stated below, we do not decide the merits of these allegations.

Unlike the Auto Discount protest, the Jerry's and George's protests do not involve requirement set up in the IFB as definitive responsibility criteria. Rather, they are performance requirements contained in the specifications. As to these, the contracting officer must exercise some discretion in concluding whether a bidder will be able to perform as required. In determining whether a bidder has adequately planned for "coverage" of his operations during the early morning hours or has made arrangements for obtaining the required number and type of low-mileage late model cars, the contracting officer must exercise the kind of business judgment which we said in Central Metal Products, supra, we would no longer review. These protests are dismissed as to these allegations.

Finally, we see no merit to the complaints of Jerry's and George with regard to the failure of the contracting officer to respond to their letters of October 16, 1979 and October 18, 1979, respectively, and to treat their letters as protests. The letters, which were sent during the bid evaluation period, merely discussed the deficiencies of their competitors, extolled their own capabilities and expressed the thought that it would be inappropriate to award the contracts to any of the other bidders. We find in neither of these letters any indication of an intent to lodge a protest and such an intent must be evident before a letter need be treated as a protest. See Joule Technical Corporation, 58 Comp. Gen. 550 (1979), 79-1 CPD 364. Moreover, we see nothing wrong with the contracting officer's failure to respond to such letters until the competition was completed.



For the Comptroller General
of the United States