



18  
COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-178968

July 25, 1973

31214

Panmar Private Car Service Company, Inc.  
2527 Boston Road  
Bronx, New York 10467

Attention: Ms. Elizabeth Polizzi  
President

Gentlemen:

Reference is made to your letter of June 21, 1973, with enclosures, protesting the award of a contract to Executive Carriage Club, Inc. (Executive), under Invitation for Bids (IFB) No. 5244-22-74, issued May 18, 1973, by the Veterans Administration (VA), Chief, Supply Service, VA Hospital, New York, New York.

The subject IFB solicited bids for the supply of private, unmetered taxicab service to beneficiaries of the VA Hospital and the VA Regional Office, New York City, during the period from July 1, 1973, through June 30, 1974. Bids were opened on June 7, 1973, and bids were submitted from four firms, with Ryco Private Car Company as the low bidder, followed by the bids of Frank's Car Service, Executive Carriage Club, Inc., and your firm, in ascending order of price.

On the basis of preaward surveys conducted on June 15, 1973, it was determined that only your firm and Executive had the necessary facilities and capabilities to meet the contract requirements.

In your letter of June 21 you protested, inter alia, that Executive was not licensed by the New York City Taxi and Limousine Commission, and did not possess the New York Motor Vehicle Tax Stamp for each of the vehicles it proposed to utilize in performing the prospective contract. Furthermore, you alleged that its vehicles were not properly insured. By letter of June 22, 1973, Executive, the remaining low bidder, was requested by the contracting officer to satisfy the foregoing requirements by the close of business, 4:30 p.m., June 27, 1973.

920198

091430

B-178968

The record contains copies of Taxi and Limousine Commission licenses issued to Executive on June 26, 1973. Also, the record includes evidence from the bidder of workmen's compensation, general liability and automobile liability insurance for the period of April 28, 1973, through April 28, 1974. Furthermore, the contracting officer has included a listing of the "plate numbers" for ten of Executive's vehicles with the notation that tax stamps were presented to him for each of the vehicles.

It was reported that due to an urgent need to provide the services enumerated in the IFB to eligible beneficiaries, a contract would be awarded to Executive on June 26, 1973, provided that it satisfied the requirements of the IFB by June 27, 1973. In this regard, an award on the grounds of urgency, prior to the issuance of a decision by our Office, is permissible upon a written explanation in the record as to the need for an immediate award. (See Federal Procurement Regulations 1-2.407-8(b)(3) and (4).) An award on this basis was accordingly consummated with Executive.

With regard to licenses, Item 12 of the Supplementary General Provisions of the instant IFB required the prospective contractor to be licensed in those localities where such licenses are required for the performance of the contract. Item 6 required the contractor to obtain "all necessary licenses," and to assume responsibility for injuries to persons and property arising from negligence in the performance of the contract. Item 25 required satisfactory insurance coverage as "a condition precedent to award of a contract," and set forth minimum sums of coverage for general liability and automobile liability, sums which Executive's policies, issued April 28, 1973, exceed. There is no evidence that Executive's workmen's compensation and employer's liability policy, also issued April 28, 1973, failed to meet applicable state requirements as required by Item 25.

In the instant case the required licenses were obtained after bid opening. It has been our consistent position that an IFB requirement that a bidder possess the necessary license authority to perform a contract is a matter bearing on the bidder's responsibility and, as such, the failure to meet the requirement at the time of bid opening is not fatal to a consideration of the bid. See 51 Comp. Gen. 377 (1971) and cases cited therein.

You also question whether Executive can provide private unwatered taxicab service on a 24 hour basis as required by the contract, and you express doubt that Executive can comply with certain other sections of the IFB.

1-178968

In this regard, the preaward survey performed on Executive on June 15, 1973, concluded that that firm had all the necessary facilities and capabilities to comply with the contractual requirements of the IFB. Where a determination of a firm's responsibility has been made on the basis of a favorable pre-award survey, we will not substitute our judgment for that of the contracting officer in the absence of convincing evidence that the determination was arbitrary, capricious, or was not based upon substantial evidence. 51 Comp. Gen. 703, 708-709 (1972). In the instant case, we do not find that the contracting officer's determination was arbitrary or capricious, or that it was not based on substantial evidence.

Accordingly, your protest must be denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General  
of the United States