

6054
DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548****FILE: B-190395****DATE: April 17, 1978****MATTER OF: Borinquen Bus Service, Inc.****DIGEST:**

1. Even though bidder for school bus services submitted only the unit price of each bus run and the total daily price for all required bus runs and did not submit extended total base bid price for the total number of school days anticipated, bid is responsive to requirement that contractor furnish services for all school days anticipated in solicitation. Moreover, extended total price for entire school year is determinable from information provided in awardee's bid and was properly considered.
2. Solicitation provision which requires bidder to show that it is authorized to operate school buses required in performance of contract or to submit guaranty from the licensing authority that the authorization would be issued in due time was unduly restrictive. Record shows that contractors have not been prevented from performing contract pending the processing of permit application. In such circumstances license requirement does not appear to be a necessary prerequisite for award.
3. Compliance with solicitation requirement that contractor submit to the Government a certificate of insurance for a subcontractor at least 5 days before a subcontractor begins performance is a matter of contract administration and is not for determination under bid protest procedures.
4. Question of whether or not contractor is supplying the number of buses estimated in IFB to be required for performance and represented by contractor as being available is a matter of contract administration and is not for determination under bid protest procedures.

5. Allegation that bidder failed to execute "Affirmative Action Program" provision in solicitation involves a question of bidder responsibility, not responsiveness. Moreover, failure to complete such provision may be waived by agency as a minor informality or irregularity under ASPR 2-405(vi).

Borinquen Bus Service, Inc. (Borinquen) protests the award to another bidder of a contract under Solicitation No. 62470-77-B-2888, for school bus transportation services, issued by the United States Naval Station, Roosevelt Roads, Puerto Rico.

Award was made to Manuel Fuentes-Reyes. Borinquen, the next low bidder, protested to the Navy on the ground that the awardee was nonresponsive. Borinquen, having received no response from the Navy, subsequently filed a protest with this Office. Borinquen's protest is based on the following contentions:

- 1) the awardee's bid was nonresponsive because the bidder failed to state its total base bid price;
- 2) the awardee did not comply with the solicitation requirement for acquiring a bus permit;
- 3) the awardee did not comply with the requirement for furnishing certificate of insurance for subcontractors;
- 4) the awardee is not supplying the number of buses estimated in the solicitation; and
- 5) the awardee's bid was nonresponsive because it did not contain an "Affirmative Action Program" certificate.

Borinquen contends that the bid submitted by the awardee was nonresponsive because the bidder failed to submit an extended total base bid price covering the estimated 176 school days. Rather, the awardee submitted a unit bid price for each of the 28 buses estimated in the solicitation for daily use and a total daily price. The protester argues that to permit the bidder to extend

its total daily bid for 28 buses over the total estimated school days, in effect, permits the bidder to submit a late bid.

In submitting a unit bid price for each of the estimated 28 buses required for daily use, the bidder, in our opinion, indicated a sufficiently clear intention to satisfy the Government's requirements for school bus services for the school days anticipated in the specification. It would be unreasonable to conclude that the bidder merely intended to perform these services for one day, as implied by protester's argument. The bid, therefore, was responsive in the sense that it was an offer to perform in accordance with the specification. Moreover, the total estimated base bid price for the anticipated entire school year is determinable from information provided in the awardee's bid, and we see no basis for objecting to the bid evaluation conducted in this case. Dependable Janitorial Service and Supply Company, B-188812, July 13, 1977, 77-2 CPD 20; Federal Aviation Administration--Bid Correction, B-187220, October 8, 1976, 76-2 CPD 326; Atlantic Maintenance Company, 54 Comp. Gen. 686 (1975).

The protester also argues that the awardee was nonresponsive because it did not comply with paragraph 1.8 of the IFB, which states as follows:

"1.8 Permits and Approvals The contractor shall obtain and maintain thereafter during the term of the contract and without increased cost to the U.S. Government, all necessary franchises, permits, licenses, and approvals as may be required by Federal, Commonwealth of Puerto Rico and municipal laws and regulations.

"1.8.1 Bidders are required to furnish with their bid satisfactory evidence that they possess the necessary permits, licenses, franchises, registrations, titles and approvals from the Commonwealth of Puerto Rico which authorize them to operate school buses * * * as will be required in the performance of this contract.

"In the absence of such permits, licenses, franchises, registrations, titles and approvals, the Bidder may submit a valid document from officials of the Commonwealth of Puerto Rico authorized to issue such permits, licenses, franchises, registrations, titles, and approvals guarantying that the required permits, licenses, franchises, registrations, titles and approvals will be issued in due time should the contract hereunder be awarded to the bidder. Failure of the bidder to comply with the above will constitute grounds for rendering his proposal as non-responsive."

The awardee furnished with its bid a certificate of the Sub-Secretary of the Public Service Commission (P.S.C.) that he was a permit holder and that any new bus routes would be considered by the P.S.C. Borinquen contends that this certificate does not comply with paragraph 1.8.1 because it does not provide a guarantee that the required authorization for additional bus routes would be issued in time to permit contract performance. Borinquen further contends that as of nearly a month after award the awardee had not yet been authorized to operate school buses in accordance with the performance required under the contract.

The Navy on the other hand contends that this certificate satisfies the requirements of paragraph 1.8.1 of the specifications and that prior to award, it obtained verification from the P.S.C. that an "extended permit application" of the awardee was then awaiting final processing and mailing. The Navy also points out that the P.S.C. must await a contract presentation before processing an extended permit. Moreover, the Navy argues that in view of our decision, Paul's Line, Inc. et al., B-181914, October 9, 1974, 74-2 CPD 201, the solicitation requirement for furnishing evidence of "permits and approvals" is not a valid basis for finding the awardee nonresponsive, but is a matter for resolution by the bidder and the local authority.

Where a solicitation requires a bidder to hold a specific identifiable license, determined by the contracting officer to be necessary for performance of the contract, possession by the bidder of the particular license may be a prerequisite for award. 53 Comp. Gen. 51, 53 (1973). In contrast, where an agency, by use of general language in a solicitation, attempts to insure compliance with State licensing requirements that may or may not be applicable to or enforced against prospective contractors, this Office has held that the obtaining of such licenses and permits is a matter which must be settled between the local authorities and contractors. See 53 Comp. Gen. 36, 38 (1973); B-125577, October 11, 1955; cf. 53 Comp. Gen. 51 (1973). We have stated the reason for this rule as follows:

"State and municipal tax, permit, and license requirements vary almost infinitely in their details and legal effect. The validity of a particular state tax or license as applied to the activities of a Federal contractor often cannot be determined except by the courts, and it would be impossible for the contracting agencies of the Government to make such determinations with any assurance that they were correct. It is precisely because of this, in our opinion, that the standard Government contract forms impose upon the contractor the duty of ascertaining both the existence and the applicability of local law with regard to permits and licenses. In our opinion, this is as it should be."

In the present case, it is not apparent from the solicitation that the contracting officer identified and determined a particular licensing requirement to be necessary to perform the required service. We note that in Puerto Rico, operation of buses to transport school children requires both an authorization from the P.S.C. and license plates from the Department of Transportation and Public Works.

Nevertheless, it appears that the P.S.C. does not prevent bus operators from performing Government contracts during the pendency of an application on the routes covered by the contract. We note that the protester in its prior Government contract and the awardee of the present contract were not prevented from performing prior to obtaining authorization from the P.S.C. Consequently, an authorization from the P.S.C. was not necessary to commence performance of the contract. We are recommending to the agency that the solicitation clause should be revised in that respect.

Borinquen next contends that the awardee failed to furnish a certificate of insurance for each subcontractor because it did not furnish a certificate of insurance for buses owned by two alleged subcontractors, which the awardee intended to use in the performance of this contract. Paragraph 1.11.1 provides that the prime contractor shall furnish a certificate of insurance at any time at least five days before a subcontractor begins performing services under the contract. This is not a bidding requirement and the awardee's compliance with this provision is a matter for resolution by the contracting agency in the course of the administration of the contract rather than for resolution under GAO Bid Protest Procedures. See Nu Aire Inc., B-190383, December 16, 1977, 77-2 CPD 478; Crowe Rope Co., B-187092, August 18, 1976, 76-2 CPD 174.

Borinquen also contends that the awardee is using only 21 buses to perform the contract, whereas the solicitation estimated that 28 buses would be required and the awardee represented that it had 28 buses available. The question of whether or not the contractor is using the required number of buses to comply with the solicitation is a matter of contract administration and is not for resolution under GAO Bid Protest Procedures. See Nu Aire Inc., supra; Crowe Rope Co., supra.

Finally, Doringuen asserts that the awardee failed to certify that it had an affirmative action program, as was required by the solicitation. This Office has held that the affirmative action program requirement concerns bidder responsibility rather than bid responsiveness, and may be completed after bid opening. Royal Industries, B-185571, March 1, 1976, 76-1 CPD 139; Allis-Chalmers Corp., 53 Comp. Gen. 487 (1974), 74-1 CPD 19. As in Allis-Chalmers Corp., supra at 489, the clause involved here "is merely for informational purposes and does not purport to bind the bidder to any course of action or other obligation upon acceptance of the bid." Moreover we note that ASPR 2-405(vi) provides that failure to execute the certification with respect to Affirmative Action Programs is a minor deviation which may be corrected after bid opening or waived where it is to the advantage of the Government. Consequently, the failure of the awardee to execute the Affirmative Action Program certification did not affect the validity of the award.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States



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

Keith Baker
PL II

B-190395

April 17, 1978

The Honorable W. Graham Claytor
The Secretary of the Navy

Dear Mr. Secretary:

Enclosed is a copy of our decision of today concerning the bid protest of Borinquen Bus Service under Solicitation No. 62470-77-B-2888, issued by the United States Naval Station, Roosevelt Roads, Puerto Rico.

We wish to call your attention to the solicitation provision requiring the bidder either to produce evidence of authority to operate school buses or to submit a guaranty from the licensing authority that authorization would be issued in due time. In our opinion this provision was unnecessary and should be revised for future procurements.

We would appreciate advice of whatever action is taken on the recommendation.

Sincerely yours,

Deputy

R. F. K. 114
Comptroller General
of the United States

Enclosure

cc: Rear Admiral A.R. Marschall
Commander, Naval Facilities
Engineering Command