



## Decision

**Matter of:** Nilson Van & Storage, Inc.

**File:** B-403009

**Date:** August 19, 2010

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Francis M. Mack, Esq., Richardson, Plowden & Robinson, PA, for the protester.  
LTC Michael L. Norris, Department of the Army, for the agency.  
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Awardee's bid's failure to establish compliance with solicitation requirement for appropriate federal and state certifications for transportation of household goods did not render awardee ineligible for award where it is clear from solicitation that requirement was intended to apply to contractor, rather than to all bidders, and thus was not a prerequisite to receiving award.

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### DECISION

Nilson Van & Storage, Inc., of Columbia, South Carolina, protests the award of a contract to Ken Krause Company (KKC), of Vass, North Carolina, under invitation for bids (IFB) No. W91247-09B-0005, issued by the Department of the Army, Army Mission and Installation Contracting Command Center, Fort Bragg, North Carolina, for the preparation, shipment and/or storage of personal property of Department of Defense personnel. The protester contends that the awardee does not have the appropriate federal and state certifications for the transportation of household goods, and that the agency improperly failed to inspect the awardee's facilities to verify compliance with solicitation requirements.

We deny the protest.

The performance work statement (PWS) of the IFB advised bidders that "prospective contractors" engaged in interstate transportation "shall be approved and hold authorization in their own name by the Interstate Commerce Commission [ICC], or, if engaged in intrastate transportation, a certificate issued by the appropriate state regulatory body will be required." IFB attach. 1, at 2. The IFB also provided that Federal Acquisition Regulation (FAR) § 52.247-2, which provides, in relevant part,

that the “offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded”—was applicable. Id.

Nilson argues that KKC is not eligible for award because it does not have Interstate Commerce Commission (ICC) or Department of Transportation (DOT) approval as a “for hire carrier,” and does not have ICC, DOT, or North Carolina state approval for the transportation of household goods, as required by the IFB.

Nilson’s argument is premised on an interpretation of the IFB that bidders were required to possess the required authorizations as a precondition to receiving award. We do not agree with Nilson’s interpretation; rather, we think the IFB made the authorization requirement applicable only to the awardee, and only after award. In this regard, as noted, the requirement was set forth in the PWS—that is, in the portion of the IFB that established the requirements the contractor must meet in performing the contract. Further, the requirement applied to “prospective contractors,” not to the bidders, another indication that the requirement was part of contract performance. Finally, the language of FAR § 52.247-2, stating that the “offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded,” is consistent with the view that the relevant time for establishing compliance with the authorization requirement was after award, during performance; if authorization were required as a precondition to receiving the award, there would be no need for the contractor to again present the authorizations prior to its beginning performance.

It is sufficiently clear from these considerations, we think, that the requirement applied to the contractor, rather than to all bidders, and thus was not intended as a prerequisite to receiving award. Under these circumstances, the requirement does not come into play in the award decision except as a general responsibility matter. United Seguranca, Ltda., B-294388, Oct. 24, 2004, 2004 CPD ¶ 207 at 4. We will not review a contracting officer’s affirmative determination of a bidder’s responsibility, except in circumstances not alleged or demonstrated here. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2010). We conclude that KKC’s alleged failure to meet the authorization requirement did not render it ineligible for award. Id.

Nilson also argues that the agency improperly failed to inspect KKC’s facilities to ensure that they comply with the minimum health and safety standards for warehouses set forth in the solicitation. In this regard, the PWS required, among other things, that the contractor’s warehouse have an acceptable automatic sprinkler system, a supervised fire detection and reporting system, and an installed and accredited fire protection system. IFB attach. 1, at 30-31.

This argument fails to state a valid basis of protest. Protests must include a detailed factual and legal statement, supported by explanation or evidence, that establishes the likelihood that the protester will prevail in its claim of improper action; failure to do so will result in dismissal of the protest. 4 C.F.R. §§ 21.1(c) (4) and (f). Nilson

provides no factual basis or support for its assertion; rather, it merely speculates that the agency failed to conduct an inspection of the awardee's warehouse. In any case, the argument is without merit. The agency reports that the contract specialist inspected the awardee's two warehouse facilities and found them to be in full compliance with the PWS. Agency Report at 8-9. Nilson has not established otherwise.<sup>1</sup>

Nilson maintains that KKC is ineligible for award because its bid indicated that it would use facilities located at a residential address, which zoning will not permit, and because it was not registered in the "Central Contractor Registration" database. Protest at 2. The agency responded to these arguments in its report; Nilson did not rebut the agency's position in its comments on the report. We thus consider these issues abandoned. See Delco Indus. Textile Corp., B-292324, Aug. 8, 2003, 2003 CPD ¶ 141 at 3 n.2.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>1</sup> Moreover, nothing in the IFB required compliance with the health and safety standards prior to award. Thus, even if the record supported Nilson's contention that the agency failed to inspect KKC's facilities, this would not provide a basis for questioning the award. See Public Facility Consortium I, LLC; JDL Castle Corp., B-295911, B-295911.2, May 4, 2005, 2005 CPD ¶ 170 at 2-3; SDA, Inc.--Recon., B-249386.2, Aug. 26, 1992, 92-2 CPD ¶ 128 at 2-3.