



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

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B-176227

October 27, 1972

Dear Mr. Sampson:

We refer to a letter dated July 14, 1972, from your General Counsel transmitting a report in connection with the protest of United Office Machines (United) against the award of a contract to another firm under invitation for bids No. GS-O&DP-(P)-2014, issued by your agency (GSA).

The subject IFB was issued by GSA, Region 6, on March 10, 1972, for indefinite quantity requirements type contracts for repair and maintenance of adding machines and calculators covering the period July 1, 1972, through June 30, 1973. Separate awards were to be made for bid schedules 1, 2, 3 and 4, designating the type of adding machine or calculator, for (a) "Item 1, Hourly Rate - Repairs" (excluding parts) for each service area specified and (b) "Item 2, Annual Maintenance" for each listed make and/or model for each service area. United was the apparent low bidder on 15 separate items.

An evaluation of United's plant facilities was initiated in order to assist the contracting officer in determining that firm's responsibility as a prospective contractor in accordance with Federal Procurement Regulations (FPR) 1-1.204-1, which provides that contracts be awarded only to responsible prospective contractors. The evaluation resulted in a negative recommendation, primarily because United lacked a sufficient number of machines which could be loaned to the ordering agency for use, when and if requested, while the agency's machines are being repaired. In addition it was noted that United's shop is located in the owner's home, which at the time of inspection had no sign identifying it as a business location. Therefore, the contracting officer determined that United was not responsible because of the lack of loan machines or written commitments for their purchase, and because there was little indication that United was regularly engaged in the adding machine and calculator repair business as required by the invitation. The matter was not referred to the Small Business Administration under the Certificate of Competency procedure since the estimated amount of the procurement (\$2,400) was under \$2,500. FPR 1-1.703-2(a)(2). Award was made to another firm on May 22, 1972.

United protests the determination of nonresponsibility, stating that it was considered responsible by Region 6 to perform under a

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same information concerning United was available for this procurement. It seems to us, therefore, that the same determination of responsibility should have been made on both procurements.

Although we can perceive of no legal basis to disturb the award to another bidder, we believe that information obtained in connection with a particular procurement should be utilized, where relevant, in a similar concurrent procurement.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

The Honorable Arthur F. Sampson
Acting Administrator, General
Services Administration

similar contract for typewriter repairs and maintenance. United contends that it should not have been determined nonresponsible for failure to have a sufficient number of loan machines at the time of the preaward survey as the surveyor was advised that they would be purchased as needed for this purpose.

We have recognized that the contracting agency has the duty of deciding the responsibility of a prospective contractor. In making this determination the agency is vested with a considerable degree of discretion. See 45 Comp. Gen. 4 (1965); 43 id. 257 (1963).

While we are unable to conclude from the record that the non-responsibility determination was invalid, it is our view that United should have been afforded the opportunity to establish its ability to furnish loan machines prior to the negative determination. It is noted that although the advisory preaward survey was negative, the survey reported United as stating that it could buy machines as needed for loan purposes.

Paragraph 12 of the invitation provides that a bidder must be regularly engaged in the business, or if newly entering the field, he must submit written commitments for space, equipment, and personnel. Under section 1-1.1203-2 of FPR a prospective contractor must have "the necessary production, construction, and technical equipment and facilities, or the ability to obtain them." In this connection, our Office has held that a bidder may be regarded as responsible if he demonstrates the ability to obtain the requisite equipment by the time performance is to begin, plus any leadtime which is necessary in the particular case. B-162888, January 4, 1968; 39 Comp. Gen. 655 (1960). Therefore, we believe that the contracting officer should have determined whether United could have furnished the loan machines if requested to do so.

Furthermore, the record indicates that United received an award for repair and maintenance of typewriters under a Region 6 solicitation issued March 3, 1972, which also included a requirement for loaners. Your agency explains that this award was made to United without requesting a plant facilities report because of the small dollar value (estimated value of \$300) of the contract involved. However, it appears from the record that the subject survey report had already been performed by Region 6 before this other award was made, and that the