

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

61193

FILE: B-186204

DATE: July 23, 1976

MATTER OF: Oceanside Mortuary

97871

DIGEST:

It was improper to make award to bidder which exceeded by three minutes IFB requirement that contractor's facility be located within 30-minute drive from user. GAO does not recommend contract be terminated for convenience because waiver of 30-minute requirement was permitted by decisions later overruled in Haughton Elevator Division, Reliance Electric Company, B-184865, May 3, 1976, 55 Comp. Gen. _____, 76-1 CPD 294. In future procurements definitive criteria of responsibility such as 30-minute requirement should be strictly observed.

Oceanside Mortuary (Oceanside) protests award of a contract to Encinitas Mortuary (Encinitas), the low bidder under invitation for bids (IFB) No. N00244-76-B-0282 issued by the Naval Supply Center, San Diego, California (Navy). The IFB, issued January 15, 1976, requested bids for the care of the remains of deceased personnel including various supplies, services and transportation in connection therewith. Oceanside, the second low bidder, asserts it is entitled to award of the contract because Encinitas did not meet the requirements of section C.29 of the solicitation, providing that:

"The contractor will possess a facility located within thirty (30) minutes surface traveling time of NAVAL HOSPITAL, CAMP PENDLETON, CALIFORNIA."

The Navy agrees with Oceanside's assertion that Encinitas does not possess a facility within the 30 minute time limitation set out in the IFB. The report indicates that on March 3, 1976, after the opening of bids and following a protest from Oceanside, the Navy clocked the average time of travel between the Encinitas facility and the Naval Hospital at 33 minutes 35 seconds. The report also contains the statement that this trip cannot be made

in 30 minutes at the speed limits even if all stop lights were green and no traffic were encountered. It is noted, however, that the report contains another opinion suggesting an opposite conclusion on this point. In any event, the Navy contracting officer determined the actual traveling time between the Encinitas facility and the Naval Hospital to be 33 minutes 20 seconds. Thereafter, award was made to Encinitas on March 4, 1976. Oceanside argues that in the circumstances award to Encinitas was improper.

The Navy asserts that the time requirement of section C.29 of the specifications was primarily for the benefit of the Government in order to insure that inspection of remains could be made within a reasonable travel distance from the Naval Hospital. It is the Navy's contention that the needs of the Government were met by Encinitas and that it was more advantageous for the Government to make award accordingly. In this regard the Navy also argues that the amount of time in excess of the 30 minute limitation should be viewed as minor.

At the outset we note that our Office has characterized requirements that a bidder have facilities located within a certain area as relating to a bidder's responsibility, not the responsiveness of a bid. See, e.g., Plattsburgh Laundry and Dry Cleaning Company, 54 Comp. Gen. 29 (1974), 74-2 CPD 27, and cases cited therein. The time requirement of section C.29, while distinguishable from a geographic limitation such as found in the above-cited case, is nevertheless sufficiently similar to likewise be characterized as relating to bidder responsibility. Our review of the Navy's affirmative determination of Encinitas' responsibility is undertaken pursuant to our practice of examining such a finding when the solicitation contains definitive responsibility criteria which allegedly have not been applied. Yardney Electric Corporation, 54 Comp. Gen. 509 (1975), 74-2 CPD 376; Oscar Holmes & Son, Inc., Blue Ribbon Refuse Removal, Inc., B-184099, October 24, 1975.

In a number of past decisions, we held that even though a bidder did not meet the prescribed criteria of responsibility set forth in a solicitation, a proper award could be made to that bidder provided the agency determined the bidder to be otherwise responsible. However, those cases were specifically overruled in our decision Haughton Elevator Division, Reliance Electric Company, B-184865, May 3, 1976, 55 Comp. Gen. _____, 76-1 CPD 294, which was issued after the award in the instant case. In Haughton, we stated that meeting definitive criteria

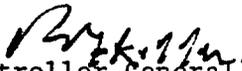
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of responsibility is a prerequisite to an affirmative determination of responsibility. To waive such criteria as the contracting officer sees fit is misleading and prejudicial to other bidders who have a right to rely on the wording of the solicitation and thus to reasonably anticipate the scope of competition for award.

We are not inclined to disturb the award made in the instant case since it was consistent with some of the decisions of our Office which subsequently have been overruled in Haughton. In the future, however, we shall expect the procuring agency to adhere strictly to definitive responsibility criteria such as the 30-minute limitation in this case.

The protest is sustained.

Deputy


Comptroller General
of the United States