

Protest of )  
 ) Date: November 15, 1990  
COMPLETE MOBILE WASH U.S.A., INC. )  
 ) P. S. Protest No. 90-64  
Solicitation No. 359991-90-A-0180 )

### DECISION

Complete Mobile Wash U.S.A., Inc., ("Complete") timely<sup>1/</sup> protests award to Modern Mobile Wash, Inc., ("Modern") for vehicle washing services for postal facilities in Buffalo, NY. Solicitation No. 359991-90-A-0180 was issued on July 9, 1990, by the Procurement & Materiel Management Service Center, Rochester, NY, with an offer due date of July 24. The solicitation contained the standard provision at Section L.3, CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (Provision 1-1) (October 1987), in which the offeror certifies that:

[t]he prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other offeror or with any competitor.

Prior to the offer due date, Complete complained to the contracting officer that Modern's president, Mr. Barnes, was a recent former employee of Complete and that any proposal submitted by Modern would be unfairly developed from an intimate knowledge of Complete's bidding strategy and prices. The contracting officer asked both parties to submit statements addressing the issues raised.

The parties' statements, unsupported by documentation, presented a factual dispute. Complete stated that Mr. Barnes' knowledge of its operation consisted of review of work performed under a prior Postal Service contract, analysis of unit prices intended to be quoted, and verification that the proposed prices would meet the requirements of the solicitation. Complete also stated that any proposal from Modern was submitted without Complete's knowledge or consent.<sup>1/</sup> On behalf of Modern, Mr. Barnes stated

<sup>1/</sup>Notice of award was sent to Complete on September 13. The contracting officer received Complete's protest on October 2. The record does not indicate the exact date that Complete received the award notice, but does show that Complete called the contracting officer on September 19 to request information about how to file a bid protest. Lacking definitive information on Complete's actual receipt of the award notice, we will consider the protest to be timely. Information Systems Design, Inc., P.S. Protest Nos. 79-2 & 79-3, April 6, 1979.

<sup>2/</sup>The contracting officer subsequently asked the president of Complete if he could provide any documentation in support of these allegations and was told that the statement contained all the relevant information.

that Complete's allegations were completely without merit and that his position at Complete was that of washer/driver with responsibilities that included washing services and quoting job pricing to prospective customers. He contended that the Postal Service solicitation went directly to Complete's president and was handled solely by him. Modern insisted that they had no access to company records or other office materials.

After receiving these statements, the contracting officer determined that there was insufficient evidence of anticompetitive practice to warrant cancellation of the solicitation. Subsequently, she awarded Modern the contract on September 13. Complete's timely protest followed.

In its protest, Complete repeats its allegation that Modern gained an unfair advantage by using proprietary information acquired during Mr. Barnes' employment to arrive at its price. Complete asserts that Modern's certification of independent price determination is, therefore, fraudulent. Complete contends that, during his employment at Complete, Mr. Barnes was totally familiar with the work performed under a prior Postal Service vehicle cleaning contract and with the prices charged, and actively participated in discussions pertaining to Complete's offer under this solicitation. Complete submits the statement of an employee that she participated in the preparation of Complete's offer, along with Modern's president and two other Complete employees. Complete also furnished payroll records showing that Mr. Barnes was employed by Complete through August 15, 1990.

In her report on the protest, the contracting officer notes that at the time of award she had determined Complete's earlier complaints to have been unsupported. In her opinion, the allegations in the protest are still without merit and the protest should be denied.

Both parties submitted supplemental comments. Complete reiterates its belief that Modern's proposal is fraudulent. Modern alleges that Complete is attempting to hinder its ability to compete for vehicle washing services in the Buffalo area, claiming that Complete went so far as to attempt to purchase the business of Modern's financial backer. Modern insists that its president was not involved in the preparation of Complete's proposal and that he was completely honest with Complete's president about his intention to open his own business.

Complete's complaint that Modern's president fraudulently used proprietary information in its offer is not for consideration by our office in a protest proceeding. As the Comptroller General has stated:

The allegation of conflict of interest which concerns the actions of a former employee of the incumbent contractor is beyond the scope of our bid protest function as it involves a dispute between private parties concerning business practices and relationships which is properly for resolution by the private parties through the courts, if necessary.

Creative Medical Management, Inc., Comp. Gen. Dec. B-236266.2, August 15, 1989, 89-2 CPD & 143. Similarly, allegations that a former employees revealed proprietary

information to their new employer is not for resolution in a protest proceeding.  
Computer Automation, Inc., Comp. Gen. Dec. B-236972, September 28, 1989, 89-2  
CPD & 286. We adopt these criteria as our own and dismiss Complete's protest.<sup>1/</sup>

The protest is dismissed.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[checked against original JLS 6/21/93]**

<sup>3/</sup>On the merits, we note that, in the absence of evidence of collusive bidding, allegations such as those raised by Complete do not show a violation of the offeror's certificate of independent price determination. Computer Automation, Inc., *supra*. Complete misunderstands the purpose of the certificate. It is to prevent collusion between offerors, not to prevent offerors from competing as Complete complains.