

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

50945

FILE: B-184384

DATE: July 29, 1975

9.7338

**MATTER OF: Veterans Administration - Request for Advance  
Decision****DIGEST:**

1. IFB provision that successful bidder meet all requirements of Federal, State or City codes does not justify rejection of low bidder for failure--either at time of bid opening or award--to have Certificate of Public Convenience called for by city ordinance since need for certificate under such general requirement is matter between city and contractor.
2. Equipment information intended to determine bidder capacity and ability to perform contract is matter of responsibility, not bid responsiveness, and such information may be submitted after bid opening.

Baldwin Ambulance Service (Baldwin) has protested to the Veterans Administration (VA) the proposed award of a contract to Metro Medic Ambulance Service, Inc. (Metro Medic), the low bidder under invitation for bids (IFB) No. 423-15-76 issued by the VA, Jackson, Mississippi. The IFB was for furnishing ambulance service to beneficiaries of the VA for fiscal year 1976. The contracting officer has requested an advance decision as to whether Metro Medic can be considered a responsive bidder.

Baldwin's protest is based on the fact that Metro Medic does not possess a Certificate of Public Convenience as allegedly required by the Code of Ordinances of the City of Jackson, Mississippi, and further, that Metro Medic, in its bid, did not list the vehicles it proposed to use, the location from which ambulances would be dispatched and the telephone number where calls for service were to be received.

The pertinent portions of the IFB are paragraphs 2(a) and (b) of the "Special Conditions" entitled "Qualifications," which read as follows:

"2. QUALIFICATIONS: a. Proposals will be considered only from bidders who are regularly established in the business called for and who are financially responsible and have the necessary equipment and personnel to furnish service in the volume required for all the items under this contract. Successful bidder shall meet all requirements of Federal, State or City codes regarding operation of this type of service.

b. Each bidder must submit with his bid a letter in duplicate fully describing the make of vehicle, model, and year which he agrees to furnish under this proposal including the location and telephone number of his establishment where calls are received and vehicles are immediately available for dispatch. This letter must contain information as to the metering devices or method bidder proposes to use in determining mileage. The Contracting Officer will be notified in writing of any ambulance equipment added after award of contract."

It is the position of Baldwin that the failure of Metro Medic to have the Certificate of Public Convenience renders it ineligible to provide ambulance service within the City of Jackson and, therefore, the low bid should be disregarded.

In B-125577, October 11, 1955, our Office stated the general rule regarding the effect of State or local laws requiring a license or permit as a prerequisite to performing the type of services required by a Federal contract, 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 laws with regard to permits and licenses. In our opinion, this is as it should be.

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"No Government contracting officer is competent to pass upon the question whether a particular local license or permit is legally required for the prosecution of Federal work, and for this very reason the matter is made the responsibility of the contractor. No statute has been brought to our attention which would authorize the inclusion of a condition in Federal contracts or bid invitations that local permits or licenses must be obtained, regardless of their necessity as applied to the work to be done. Accordingly, we are of the opinion that the obtaining of a general contractor's license for performing Government work in Tennessee is a matter which must be settled between the local authorities and the contractors, either by agreement or by judicial determination."

If a State or locality determines that under its laws a Federal contractor must have a license or a permit as a prerequisite to its being legally capable of performing the required services for the Federal Government within the State's or locality's boundaries, the State or locality may enforce its requirements against the bidder, provided the application of the law or ordinance is not opposed to or in conflict with Federal policies or laws, or does not in any way interfere with the execution of Federal powers. See Charles Paul v. United States, 371 U.S. 245 (1963). In those instances where the requirements of a State law or local ordinance do not violate this proviso, the State or locality may proceed to enforce its requirements against a

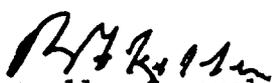
contractor who failed to comply. However, if as a result of enforcement by the State or locality, the contractor chooses not to perform the contract or is prohibited from doing so by an injunction, the contractor may be found in default and the contract terminated to its prejudice. 53 Comp. Gen. 36, 38 (1973).

Therefore, the failure of Metro Medic to possess the Certificate of Public Convenience at the time of bid opening or even by the time of the award does not bar the bid from consideration for award. 51 Comp. Gen. 377 (1971); and 53 Comp. Gen., supra, wherein we denied a similar protest involving a solicitation containing identical language to that in special condition 2(a) here.

Baldwin relies on 53 Comp. Gen. 51 (1973) as controlling in this situation. We must disagree. As stated in that decision at page 53, there is a distinction between instances where the contracting officer uses general language in the IFB, as here, and where the contracting officer requires bidders to hold a specified license or permit and so incorporates such a requirement in the solicitation making the matter one of responsibility. Therefore, the holding in 53 Comp. Gen. 51 is inapplicable here because the IFB only stated that "bidders shall meet all requirements of Federal, State or City codes," and did not specifically list the Certificate of Public Convenience.

The 53 Comp. Gen. 36 case also disposes of Baldwin's second contention that the bid of Metro Medic must be rejected as nonresponsive for failing to submit the information requested in special condition 2(b) of the IFB above. The above-cited case dealt with a similar VA procurement for ambulance services and the failure of a bidder to submit substantially the same data which Metro Medic failed to include in its bid here. We held that the type of data requested related to the responsibility of the bidder rather than the responsiveness of the bid and therefore, the information may be submitted after bid opening. We assume that the contracting officer will obtain this information prior to a determination of responsibility regarding Metro Medic.

For the above reasons, the bid of Metro Medic may be considered for award.

  
Deputy Comptroller General  
of the United States