

DECISION



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

FILE: B-195900

DATE: August 19, 1980

MATTER OF: Washington Patrol Service, Inc.

[Protest of Bid Rejection as Nonresponsive]

DIGEST:

1. Where IFB provisions contain specific requirement that firm be licensed to conduct business as security agency and general requirement that local licensing laws be followed, agency could properly determine bidder nonresponsive based on bidder's failure to have required state license.
2. Bidder's failure to certify its size status in its bid does not excuse agency's failure to refer nonresponsibility determination to Small Business Administration, since agency, in accordance with regulations, should have given bidder opportunity to cure deficiency and record indicates bidder, if furnished that opportunity, would have claimed to be a small business.

Washington Patrol Service, Inc. (WPS), which claims to be a small business, protests the award of a contract to ENSEC Service Corporation (ENSEC) to provide an armed security guard force for a two-year period for the Naval Surface Weapons Center, White Oak Laboratory, Silver Spring, Maryland. WPS contends that it was improperly rejected as nonresponsive because of that firm's failure to hold a Maryland license to engage in security activities or to have handgun permits for its guards.

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IFB N60921-79-B-0117 was issued on May 9, 1979, and, as amended, called for bids to be submitted by June 11, for award to be made by July 2 and for performance to start on August 1. The solicitation also provided at F.31 that "The Contractor shall be licensed in the State of Maryland and shall comply with all State and local laws regarding Security Guards" and at H.3 that licenses as required by the State of Maryland be submitted on or before three days "prior to entry on duty."

When bids were opened, Transco Security, Inc. of Ohio (Transco) was the low bidder. While a preaward survey was being conducted of Transco during late June, the Navy received letters dated June 22 and 25 from the Maryland State Police advising the contracting officer that four of the firms which had submitted bids, including WPS and Transco, had not applied for licenses in Maryland. The letters further indicated that Maryland requires security firms be licensed and that the process takes from 30 to 45 days, and that guards were required to have gun permits which take from 60 to 90 days to process. As a result of the information the contracting officer found Transco to be nonresponsible because it could not obtain the necessary license and permits by the August 1 performance date, and on July 2 forwarded that determination to the Small Business Administration (SBA). Transco decided not to file for a Certificate of Competency (COC) with the SBA and withdrew its bid. WPS was the next low bidder but since it, like Transco, had not applied for the license and permits the Navy determined WPS to be nonresponsible and on July 25 made award to ENSEC which was the incumbent contractor and therefore had the necessary license and permits.

WPS argues that its bid was improperly rejected because there was no specific license and permit requirement in the IFB and that in such instances matters relating to State licenses are to be resolved between the State and the bidder and do not constitute a proper basis for a nonresponsibility determination.

It is the Navy's position that the license and permit requirement in the solicitation was specific and as such was a proper consideration in its responsibility determination. The Navy indicates that it did not refer its nonresponsibility determination regarding WPS to the SBA because WPS failed to indicate on its bid whether or not it was a small business.

We have recognized a distinction between a general requirement that a bidder or contractor be in compliance with any applicable licensing or permit requirements and a solicitation requirement that a bidder have a particular license. In the latter case, the requirement is one specifically established for the procurement and compliance with such a requirement is a matter of bidder responsibility, while in the former case, a bidder's failure to possess a particular license or permit is not a bar to award, since the need for a license to perform the contract is left as a matter between the bidder and the licensing authority. B & W Stat Laboratory, Inc., B-195391, March 10, 1980, 80-1 CPD 184.

In our view the clauses at F.31 and H.3 in this solicitation establish a specific licensing requirement that the apparent low bidder must meet as a condition of award. When the two clauses are read together they indicate that a license is required for the performance of these services in Maryland and that this license must be submitted to the Navy prior to the beginning of performance. See 53 Comp. Gen. 51 (1973) and Halifax Engineering, Incorporated, B-190405, March 7, 1978, 78-1 CPD 178, for instances where similar provisions were held to constitute specific requirements. We do not believe, however, that these clauses establish a specific requirement for handgun permits. There is no specific mention of a handgun requirement; there is only the more general language requiring the contractor to comply with State and local laws regarding security guards. We have often held that such language does not impose a preaward requirement which a bidder must meet,

but is merely a general requirement for the contractor to meet whatever local licensing requirements may exist but which are not being imposed as a Federal bidding requirement. See 53 Comp. Gen. 51, supra; B & W Stat Laboratory, Inc., supra.

Since the nonresponsibility determination was based at least in part on a proper consideration, the lack of a license to perform security services in Maryland, we do not object to the contracting officer's finding. However, we believe the issue of WPS's responsibility should have been referred to the SBA.

As indicated above, the Navy believed WPS's failure to check the box on the reverse side of Standard Form 33 to indicate whether or not it was certifying itself as small made such a referral unnecessary. Under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. I 1977), however, no small business concern may be precluded from award because of nonresponsibility without referral of the matter to SBA for a final disposition under the COC procedure. Angelo Warehouses Co., B-196780, March 28, 1980, 80-1 CPD 228. While the contracting officer may not have known from WPS's bid that the firm was a small business, the contracting officer knew or should have known of the absence from the bid of the size status certification, and, pursuant to Defense Acquisition Regulation (DAR) 2-405 (DAC 76-17, September 1, 1978), given WPS the opportunity to cure the deficiency. Had he done so, he would have been on actual notice that WPS claimed to be a small business. We do not believe that the contracting officer, by not affording WPS this opportunity, could properly deny WPS its right to an SBA review of the nonresponsibility determination. See generally Anderson-Cottonwood Disposal, B-194885, August 8, 1979, 79-2 CPD 98.

Thus, we are recommending by letter of today to the Secretary of the Navy that WPS be given the opportunity to certify as to its status as a small business and if it so certifies that the contracting officer immediately refer the matter to the appropriate SBA officials for the possible issuance of a COC. If a COC is issued and the protester is willing to accept an award under the subject solicitation for the remaining portion of the contract period, the contract should be terminated for the convenience of the Government. If a COC is not issued or the protester refuses such an award, no further action is required.

The protest is sustained.

A handwritten signature in dark ink, appearing to read "Milton J. Aorolan". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

For the Comptroller General
of the United States