

Report

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DECISION



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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-198727

DATE: October 16, 1980

MATTER OF: Career Consultants, Inc.

DIGEST:

1. Failure of bidder to furnish with bid statement of licensing status, bidder's qualifications, financial background, business references and training and qualifications of personnel was not proper basis for rejecting bid.
2. Contracting agency cannot make subject which is not matter of responsiveness into question of responsiveness by terms of solicitation.
3. None of exceptions to formal advertising permit negotiation for purpose of establishing reasonableness of bids received.

Career Consultants, Inc. (Career), protests the Customs Service (Customs) rejection of its bid for guard services under invitation for bids (IFB) No. CS-IV-2-80, the subsequent cancellation of the IFB and the resolicitation of the procurement.

Three bids were received under the IFB. Each was rejected for a different reason. The Career bid was rejected because it failed to furnish certain information requested in the IFB. The Ben Security bid was rejected because it was late. The third bid was rejected because the IFB was set aside for small business and the bid was from a large business.

Since Customs determined that there were no responsive bidders, the IFB was canceled and the procurement was resolicited by the issuance of a request for proposals (RFP) to Career and Ben Security.

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Customs has advised informally that no award has been made under the RFP.

Career contends that it was wrong to cancel the IFB on the basis that there were no responsive bids because the information it failed to furnish had no bearing on responsiveness. We concur with Career.

The IFB stated:

"The following documentation is required as part of the Invitation for bid:

"(1) A statement by an authorized official of the bidder setting forth its licensing status under pertinent State and local laws requiring that companies or individuals performing security guard work be licensed. A statement should also include appropriate statutory citations.

"(2) GSA Form 527 (Contractor's Qualification and Financial Information) is to be completed, signed and returned in duplicate with the Invitation for Bid.

"(3) Two business references.

"(4) A statement of training and qualifications required by the company for its personnel."

Career did not furnish any of the four items required by the IFB.

The failure to provide a statement as to its licensing status was not a proper basis for rejecting Career's bid. The IFB specifications stated:

"Prior to starting work under this contract, the contractor must have all required licenses at the time of award; the contractor must be licensed as a

qualified guarding services company in accordance with the requirements of the Commonwealth of Puerto Rico, and must maintain such licensing throughout the term of the contract. The contractor shall comply with all applicable federal and local laws in obtaining any necessary permits and licenses."

We have held that this kind of a license requirement has no bearing upon the evaluation of the bid. Washington Patrol Service, B-195900, August 19, 1980, 80-2 CPD 132; New Haven Ambulance Service, Inc., 57 Comp. Gen. 361 (1978), 78-1 CPD 225. Therefore, the failure to furnish the licensing status, which obviously was seeking information relative to the license requirement in the IFB specifications, likewise had no bearing upon the responsiveness of the bid.

Bidder's qualifications, financial background and business references are necessary to determine the bidder's financial resources, integrity, fitness, capacity and ability to successfully fulfill the contract requirements. As such, they are matters of responsibility. 34 Comp. Gen. 86 (1954).

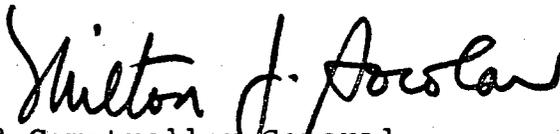
Although the IFB requested with the bid a statement from the bidder as to the training and qualifications it required for its personnel, the IFB specifications stated in detail the training requirements and qualifications the Customs Service requires of the contractor's personnel and left nothing for the bidder to describe. Therefore, the failure to furnish the statement could not affect the obligation of the bidder to perform in accordance with the specifications. The requirement for the statement was informational in nature bearing upon responsibility of the bidder and the failure to provide it should not have required rejection of the bid as nonresponsive. Science Applications, Inc., B-193479, March 8, 1979, 79-1 CPD 167; 55 Comp. Gen. 340 (1975); 49 id. 553 (1970).

Further, we have held that a contracting agency cannot make a subject which is not a matter

of responsiveness into a question of responsiveness by the terms of the solicitation. Science Applications, Inc., supra.

The Customs Service stated that the contracting officer could have entered into negotiations in order to establish the reasonableness of the Career bid; therefore, the Customs Service properly negotiated with Career and Ben Security and should be permitted to award a contract to the latter as the low offeror. However, none of the exceptions to formal advertising permit negotiations for the purpose of establishing the reasonableness of a bid received under an IFB. Although lower prices may have been obtained upon the resolicitation, they do not establish that the prior Career bid price was unreasonable, since the lower prices may be the result of the auction atmosphere created by the prior disclosure of the Career bid.

Unless it is otherwise determined that the Career bid price is unreasonable or Career is found to be nonresponsive, the canceled IFB should be reinstated and award made to Career. Tennessee Valley Service Company, B-188771, July 20, 1977, 77-2 CPD 40.


For the Comptroller General
of the United States