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DECISION



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

FILE: B-206292

DATE: February 22, 1982

MATTER OF: John Baker Janitorial, Inc.

DIGEST:

1. The Small Business Administration is empowered to make conclusive determinations on matters of small business size status.
2. GAO does not review affirmative responsibility determinations except in limited circumstances.
3. Absent a specific solicitation licensing requirement, the lack of a license or authorization for a corporation to do business in a state, which state or local authorities may deem necessary, is not a bar to contract award; rather, it is a matter to be resolved between the bidder and the state and local authorities. Nonetheless, a contracting officer may consider the lack of a license or authorization as affecting the bidder's responsibility if he determines that state or local enforcement attempts are a reasonable possibility, which could interrupt and delay performance.
4. There is no legal basis to award a contract to the second low bidder under a small business set-aside simply because it is a minority disadvantaged small business.

John Baker Janitorial, Inc. (Baker), protests the proposed award of a contract to Reliable Maintenance Service Company, Inc., the low bidder under Army invitation for bids DABT39-82-B-0004. The solicitation was a small business set-aside for maintenance services

at Fort Sill, Oklahoma, Baker, the second low bidder, protests that Reliable is not a small business concern, cannot perform satisfactorily, and is neither incorporated in the State of Oklahoma nor licensed to do business in Oklahoma. Baker also contends that the Army should award it the contract because it is a minority disadvantaged small business.

We dismiss the protest concerning Reliable's eligibility for the award. We deny the protest that Baker and not the low responsive, responsible bidder, should be awarded the contract.

The Small Business Administration is authorized by statute to make conclusive determinations on matters of small business size status for Federal procurement and sale purposes, 15 U.S.C. § 637(b) (Supp. III, 1979). For that reason, we do not consider size status protests. See Technical Food Services, Inc., B-203742.2, September 15, 1981, 81-2 CPD 219.

Reliable's ability to perform in a satisfactory manner is a matter of responsibility. Baker's protest indicates that the Army has determined that Reliable is a responsible concern. Our Office will not review an affirmative determination of responsibility absent a showing of fraud on the part of procuring officials or an allegation that definitive responsibility criteria were not applied. Global Crane Institute, B-204555, September 18, 1981, 81-2 CPD 226. Neither exception is involved here.

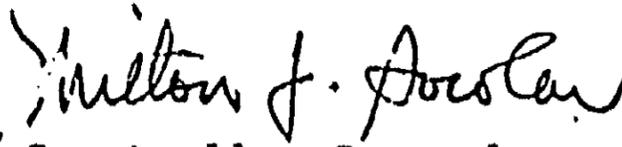
With respect to Reliable's authorization to do business in Oklahoma, Baker does not suggest that the invitation contained a specific licensing requirement. Normally, a general solicitation provision requiring the successful bidder to obtain all necessary state and local licenses does not impose a requirement with which a Federal contracting officer need be concerned prior to making award. Rather, it imposes upon the successful bidder the obligation to resolve with state and local authorities the question of what licenses are required and to obtain them. A contracting officer may consider the lack of a state or local license (in circumstances where the solicitation does not specify which licenses are mandatory) as rendering a bidder non-responsible in situations where the contracting officer determines that enforcement attempts by the state are a reasonable possibility and such enforcement attempts could interrupt and delay performance if the contract were awarded to an unlicensed contractor. Career Consultants Inc., B-195913,

March 25, 1980, 80-1 CPD 215. In general, however, the lack of a license which the state or local authorities may deem necessary would not be a bar to a contract award. The question of Reliable's authority to do business in the state as a foreign corporation (a firm incorporated in another state) is viewed similarly. Langfur Construction Corporation, B-204380, September 4, 1981, 81-2 CPD 201.

As stated above, the Army has determined that Reliable is responsible, and we will review such a determination only in circumstances that do not apply here. Thus, to the extent that Reliable's authority to do business in Oklahoma concerns that firm's responsibility, we will not review the matter.

Finally, there is no legal basis to award a contract to the second low bidder under a small business set-aside simply because the firm is a minority disadvantaged small business. See Navajo Food Products, Inc., B-203201, January 27, 1982, 82-1 CPD ____. The protest on this issue is denied.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States