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McConnell

**DECISION**



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

**FILE:** B-206083

**DATE:** March 4, 1982

**MATTER OF:** Schneider Security Agency, Inc.

**DIGEST:**

1. A bid that is not accompanied by the required bid bond must be rejected as non-responsive unless no other bids are received or the bond is received late and may be accepted under the rules for considering late bids.
2. Absent a solicitation provision requiring a bidder to possess a specific license, a firm's compliance with State or local licensing requirements is a matter to be resolved between the firm and the licensing authorities, so that the lack of such a license is not a bar to contract award.
3. The authority to determine the small business size status of a firm rests with the Small Business Administration, not GAO.

Schneider Security Agency, Inc. protests the Department of the Army's award of a contract to Washington Patrol Service under solicitation No. DAKF-40-82-B-0016, a total small business set-aside for guard services at Fort Bragg, North Carolina. Schneider complains that the Army should have waived its failure to furnish a bid bond and should not have rejected its bid. Schneider also complains that Washington is not licensed to provide guard services in North Carolina. Finally, Schneider questions whether Washington is a small business.

We deny the protest against the rejection of Schneider's bid and Washington's alleged lack of a State license, and we dismiss the protest concerning Washington's size status.

Schneider contends that the contracting officer should have waived the bid bond requirement for the firm because of Schneider's successful past performance of guard service contracts at Fort Bragg. A contracting officer, however, must reject as nonresponsive a bid which does not include a required bid bond unless it is the only bid received or the bid bond is received late but is acceptable under the rules for considering late bids. Defense Acquisition Regulation §§ 2-404.2(h) and 10-102.5(i), (iv) (1976 ed.). Since neither exception applies here, the contracting officer properly rejected Schneider's bid. United States Contracting Corporation, B-198095, June 27, 1980, 80-1 CPD 446. In this respect, if on receiving the solicitation Schneider believed that the bond requirement was inappropriate, it should have protested the matter before bids were opened. 4 C.F.R. § 21.2(b)(1) (1981).

Schneider also complains that Washington is not licensed to provide guard services in North Carolina, and therefore failed to meet the solicitation requirement that the contractor comply with all Federal, State and local law. However, unless the solicitation requires a bidder to possess a specific license or permit, a firm's compliance with State or local licensing requirements is a matter to be resolved between the contractor and the licensing authorities. Transco Security, Inc., of Ohio, B-200470, April 15, 1981, 81-1 CPD 287. The failure to possess a particular State license not expressly required by the solicitation thus does not in itself render a bidder ineligible for award. See Panmar Private Cab Corp., B-184371, December 9, 1975, 75-2 CPD 380. Since Schneider does not allege that this solicitation contained a specific license requirement, the lack of a license does not bar the award to Washington.

Finally, Schneider questions whether Washington is a small business. The authority to determine the size status of a firm, however, rests with the Small Business Administration. 15 U.S.C. § 637(b)(6) (1976); Alliance Properties, Inc., B-205253, November 10, 1981, 81-2 CPD 398. Therefore, we do not consider size status protests.

The protest is summarily denied in part and dismissed in part.

*for Milton J. Fowler*  
Comptroller General  
of the United States