

DECISION

Fitzgibbon
118981

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

FILE: B-208067

DATE: July 16, 1982

MATTER OF: American Mutual Protective
Bureau

DIGEST:

1. Where solicitation does not require a specific license, bidder's alleged lack of license is not a bar to affirmative determination of responsibility because possession of license is not a prerequisite to award.
2. No basis exists to preclude a contract award merely because the low bidder may have submitted a below-cost bid.
3. GAO no longer reviews a contracting agency's affirmative determination of responsibility except for reasons not present here.
4. GAO will not consider whether the second low bid should be rejected as nonresponsive, since GAO finds that there would be no basis to question an award to the low bidder.

American Mutual Protective Bureau (American) protests award to other bidders under invitation for bids (IFB) Nos. PBS-9PPB-82-0081 and PBS-9PPB-82-0107 issued by the General Services Administration (GSA), San Francisco, California.

The IFB's solicited bids for security guard services. Under IFB-0081, American argues that the low bidder, Intercept Patrol, submitted a below-cost bid and does not have the required State license for performing guard services and, furthermore, that the second low bidder, Northern California Security, is not financially responsible. Under IFB-0107, American argues that the low bidder, Modern Security Services, also submitted a below-cost bid and, like Intercept Patrol, lacks a State license. American also argues that the second low bid, submitted by Pacific Globe, is nonresponsive for its failure to respond to amendment No. 3 and is not financially responsible.

We find American's protest to be without merit.

Our Office has recognized a distinction between a solicitation requirement that the bidder have a particular license or permit and a general requirement that a bidder comply with any applicable licensing and permit requirements. In the former case, the requirement is one specifically established for the procurement and compliance therewith is a matter of bidder responsibility while, in the latter case, a bidder's failure to possess a particular license or permit is not necessarily a prerequisite to award, since the need of a license or permit to perform the contract is a matter between the bidder and the licensing authority. Career Consultants, Inc., B-195913, March 25, 1980, 80-1 CPD 215. Here, there is no indication that under either IFB any particular license or permit was required. Consequently, the lack of a license would not be a bar to an affirmative determination of responsibility.

As to American's two claims regarding below-cost bids, we note that the submission of a below-cost bid is not, standing alone, a proper basis to challenge the validity of a contract award. J&R Cleaning and General Maintenance, B-206280, February 19, 1982, 82-1 CPD 147. The rejection of a bid as unreasonably low requires a determination that the bidder is not responsible. NonPublic Educational Services, Inc., B-204008, July 30, 1981, 81-2 CPD 69. Our Office no longer reviews a contracting agency's affirmative determination of responsibility unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Nedlog Company, B-204557, September 21, 1981, 81-2 CPD 235. Since neither of these exceptions is claimed here, we would have no basis to question an affirmative responsibility determination by GSA either for Intercept Patrol or for Modern Security Services.

In regard to American's claim that the second low bidder under IFB-0107, Pacific Globe, should be found nonresponsive, it is unnecessary for us to consider this matter, since we find no basis to object to an award to the low bidder, Modern Security Services.

Protest dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel