

Ricketts 119337

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-207526

DATE: August 31, 1982

MATTER OF: Monarch Enterprises, Inc.

DIGEST:

Contracting agency may properly require successful bidder to obtain State license prior to awarding contract. Competition was not unduly restricted because 12 of the 17 bids received were from out-of-State and the low bidder was from out-of-State and received a license.

Monarch Enterprises, Inc. (MEI), protests the inclusion of a State licensing requirement in invitation for bids (IFB) No. DAKF49-82-B-0011, issued by the Department of the Army for security guard services at Fort Sam Houston, Texas.

We deny the protest.

Prior to bid opening, MEI objected to the State licensing requirement, a condition of award, because MEI contends that the requirement restricted competition by eliminating potential out-of-State bidders, and frustrated the Federal policy of selecting the lowest responsible bidder by conferring upon the State an unenforceable power of review over the determination of responsibility. MEI requests that the IFB be readvertised.

In response, the Army contends that the licensing requirement was valid as a matter of responsibility required prior to award of the contract. The Army reports that even though MEI did not submit a bid, 12 of the 17 bids received were from out-of-State, including the low bidder. Therefore, the Army contends that there was no undue restriction on competition. We have been advised that the low bidder obtained a State license in compliance with the IFB provisions.

Because of the nature and extent of this competition, we cannot agree with MEI that out-of-State competition was restricted.

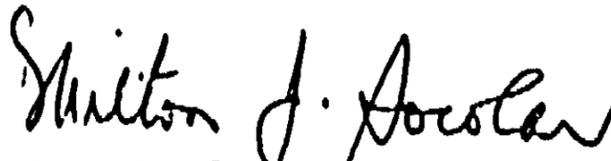
Furthermore, we have addressed and denied contentions similar to MEI's other contention concluding that a contracting officer may validly require bidders to hold a specified State license as follows:

** * * Where the contracting officer is aware of and familiar with those local requirements and incorporates those requirements into a solicitation, it may well be decided that possession by the bidder of the particular license is a prerequisite for an affirmative determination of responsibility. In such situations the requirement may properly be included in the solicitation * * *.

"To view the matter otherwise would be tantamount to requiring a contracting officer to award a contract that he knows may well be significantly delayed or even unperformed because of noncompliance with a known State licensing requirement. We are aware that State licensing requirements may not be enforceable against Federal Government contractors. Leslie Miller Inc. v. Arkansas, 352 U.S. 187 (1956). However, we think it is reasonable for a contracting officer to be more concerned with whether the contract will be carried out properly and without interference than whether he will ultimately prevail in litigation." 53 Comp. Gen. 51 (1973).

See also International Business Investments, B-204547, March 4, 1982, 82-1 CPD 194; 51 Comp. Gen. 377 (1971).

Accordingly, we deny the protest.



Acting Comptroller General
of the United States