

**DECISION**

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

*File #*  
*23607*

**FILE:** B-208443

**DATE:** November 17, 1982

**MATTER OF:** William B. Jolley

**DIGEST:**

In view of the responsibilities inherent in performing a security guard service contract, it is not unreasonable for the procuring agency to require that the otherwise successful bidder show, before award, that it is licensed by the state in which the services are to be performed.

William B. Jolley protests the inclusion in invitation for bids (IFB) No. CI-82-E021, issued by the Environmental Protection Agency (EPA), of a clause requiring prospective contractors to be licensed to perform the security guard services being solicited and to present a notarized copy of the license prior to award. Jolley contends that the clause is overly restrictive of competition. For the reasons that follow, the protest is denied in part and dismissed in part.

This contract is to be performed at EPA's Environmental Research Laboratory in Athens, Georgia. Article VI of the solicitation contains the following provision:

**"STATE LICENSE**

The contractor performing services under any contract resulting from this Invitation for Bids shall be licensed by the State of Georgia to perform security/guard service within the State in compliance with applicable State statute. The successful bidder/offeror receiving contract award shall be required to present prior to contract award a notarized copy of the applicable State license. The Government shall not be required to delay contract award to allow a bidder/offeror time to acquire a license. Failure to provide a notarized copy of the license at the

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time of award may result in a determination of nonresponsibility against the bidder/offeror. The State license shall be a determinative factor in establishing the responsibility of the successful bidder/offeror."

Prior to bid opening, Jolley protested to EPA the inclusion of Article VI in the IFB on the ground that the licensing requirement was contrary to various judicial decisions in which it was held that contractors on federal procurements cannot be forced by the states to comply with state licensing laws. After EPA denied its protest, Jolley filed a timely protest with this Office.

In this protest Jolley basically reiterates the argument made in his protest to EPA. Specifically, he contends that:

"A bidder for federal contracts is, by judicial decisions, able to perform without regard to state license. State requirements should therefore not be a matter for the IFB or the contracting officer to address."

EPA argues that the question Jolley raises has been the subject of numerous decisions by this Office, in all of which we have upheld the contracting officer's discretionary right to include a state licensing requirement in a solicitation.

In 53 Comp. Gen. 51 (1973), we upheld the inclusion of specific licensing requirements in several solicitations for guard services. We noted that "in appropriate circumstances," such as when "the nature of the procurement is such that it is reasonable to believe that only a licensed contractor could safely or effectively perform the contract," the procuring agency could properly require bidders to have a designated state or local license or permit. Especially in view of the responsibilities inherent in performing a guard service contract, we thought it not unreasonable for the contracting officer to believe that appropriate performance could be obtained only from licensed agencies. While we recognized that state licensing requirements may not be enforceable against government contractors, see Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956)--the major case relied on by Jolley--we also said

that the Miller case was not controlling since it was "reasonable for a contracting officer to be more concerned with whether the contract will be carried out properly and with out interference than whether he will ultimately prevail in litigation." In short, contracting officers may require, as a prerequisite to award of a Federal contract for guard services, that the contractor have a specific state or local guard services license. See, e.g., International Business Investments, B-204547, March 4, 1982, 82-1 CPD 194; Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132; James B. Nolan Company, Inc., B-192482, September 26, 1978, 78-2 CPD 232.

Since we find no substantial difference between the situation presented here and those of our previous decisions in which we have considered, and upheld similar licensing requirements, we have no reason to object to the inclusion of the licensing requirement in this solicitation.

In his comments on EPA's report, Jolley has "amended" and "expanded" his protest to include new questions concerning alleged defects in the solicitation. He contends that the IFB was defective in that it failed to indicate how the licensing requirement would be applied to potential subcontractors and that it should have included an "in-house legal review" of how the specific state licensing law relates to different classes of employees or how the state law would permit the use of "legal and creative business approaches" under which a bidder could qualify for award without obtaining a license.

There is no requirement that an agency include in the IFB the type of information that Jolley requests. In any event, we note that these new issues first were raised in Jolley's comments which we received on September 24, 1982. Bid opening on this solicitation was held on August 9, 1982. Therefore, these new issues are untimely filed since our Bid Protest Procedures require that protests based upon alleged defects in a solicitation be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1982).

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States