

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

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FILE: B-214078**DATE:** January 30, 1984**MATTER OF:** Mid-South Ambulance Corporation**DIGEST:**

1. GAO will not consider a protest concerning the small business size status of a bidder since exclusive authority for size determinations is statutorily vested in the Small Business Administration.
2. Where the solicitation does not require any specific state license, the alleged failure of a bidder to possess the license is not a proper basis for a nonresponsibility determination.
3. GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith by procurement officials or misapplication of a definitive responsibility criteria.

Mid-South Ambulance Corporation protests the award of a contract to American Medical Corporation under invitation for bids (IFB) No. 629-36-84, a small business set-aside, issued by the Veterans Administration Medical Center (VA), New Orleans, Louisiana. The IFB was for furnishing ambulance service. We dismiss the protest in part and summarily deny it in part.

Mid-South contends that American is possibly affiliated with a large business and thus ineligible for award; that American is not properly licensed as an ambulance service company in various parishes in Louisiana; that American does not have the financial resources, qualified technicians or equipment necessary to perform the contract; and that American cannot obtain the necessary insurance coverage required by the terms of the solicitation. In this respect, Mid-South believes that American does not qualify under the standards of the Small Business Administration (SBA) for the issuance of a certificate of competency (COC).

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With respect to Mid-South's assertion that American may be affiliated with a large business, the SBA, under 15 U.S.C. § 637(b)(6) (1982), has conclusive authority to determine matters of small business status for federal procurement and sales purposes. Therefore, our Office does not review questions about a bidder's small business size status. Doyle Shirt Manufacturing Corp., B-205959, January 11, 1982, 82-1 CPD 28. This portion of the protest is dismissed.

With respect to licenses, the solicitation contained no specific requirement that the bidder be licensed as an ambulance service company in any area. Instead, the IFB provided in general terms that bidders/contractors shall have complied with applicable local laws, and that compliance will continue throughout the period of contract performance. Where a solicitation contains only a general requirement that the contractor be in compliance with applicable laws and does not indicate a specific state or local license which is required, we have held that a contracting officer should not have to determine what the state or local requirements may be, and that the responsibility for making such a determination is correctly placed with the prospective contractor. New Haven Ambulance Service, Inc., 57 Comp. Gen. 361 (1978), 78-1 CPD 225. In these circumstances, the failure of a low bidder to obtain any state or local licenses does not affect the eligibility of a bidder to be awarded a federal contract, but rather is a matter to be resolved between the contractor and state and local authorities. Career Consultants, Inc., B-195913, March 25, 1980, 80-1 CPD 215.

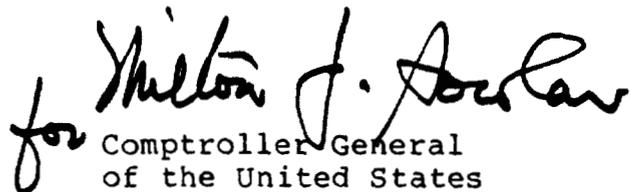
The only exception to the rule precluding the contracting officer from rejecting a low bidder for failure to possess a state or local license is where the contracting officer reasonably determines (based on indications from state authorities) that enforcement attempts by the state are likely and that there is a reasonable possibility that such enforcement attempts could interrupt and delay performance under the contract if awarded to the unlicensed contractor. See What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD 179. No such circumstances are apparent here. We therefore summarily deny the protest on this issue.

Further, Mid-South's allegations that American does not comply with applicable licensing requirements and that American is otherwise not capable of performing the

contract relate to American's responsibility as a prospective contractor. See Goodhew Ambulance Service, Inc., B-209488.2, May 9, 1983, 83-1 CPD 487; Alco Tool and Manufacturing, Inc., B-200422, October 8, 1980, 80-2 CPD 260. In this regard, we understand that the contracting officer made an affirmative determination of American's responsibility prior to awarding the contract to that firm. We do not review an agency's affirmative determination of responsibility unless there is a showing of possible fraud or bad faith on the part of procuring officials or that the solicitation contained definitive responsibility criteria which the procuring officials failed to apply. Domar Industries Co., Inc., B-202735, September 4, 1981, 81-2 CPD 199. Neither exception is applicable here. This portion of the protest is also dismissed.

Finally, the question as to whether American qualifies for a COC is a matter to be resolved by the SBA which has conclusive statutory authority with respect to such matters. Data Transformation Corporation, B-208089, August 27, 1982, 82-2 CPD 182. Further, we view this matter as academic since the contracting officer made an affirmative determination of American's responsibility, thereby obviating the need for an SBA review of American's capability under the COC program. See Art's Supplies & Services, B-210156, January 6, 1983, 83-1 CPD 14.

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


for Comptroller General
of the United States