

DECISION

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

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FILE: B-218565**DATE:** July 1, 1985**MATTER OF:** IBI Security Services, Inc.**DIGEST:**

Where the IFB does not specifically state the agency's desire for Guard II services, a bid, based on the lower wage determination for Guard I services, should be rejected even though it is responsive on its face and the protester denies that it made a mistake, when the IFB's description of the duties and qualifications for the guards clearly indicates that Guard II personnel at the higher wage rate are required.

IBI Security Services, Inc. protests the award of a contract by the General Services Administration to Whelan Security, Company, the incumbent contractor, for guard services at a federal office building under invitation for bids (IFB) No. GS-04B-84527. IBI contends that it was the low, responsive and responsible bidder^{1/} and asks that the contract with Whelan be terminated and the contract awarded to IBI. IBI further contends that the agency improperly failed to suspend performance by Whelan pending receipt of our decision. We deny the protest.

The IFB incorporated the wage determination of the Department of Labor (DOL) for two classes of guard services--Guard I at \$4.26 per hour and Guard II at \$4.99 per hour. Such determinations are required by the Service Contract Act, 41 U.S.C. § 351-358 (1982) for every government contract for the furnishing of services in excess of \$2,500. The IFB also notified the bidders that

^{1/} Ten Bids were received. IBI's bid was evaluated at \$1,402,564.65 for the initial and two option periods, including wage escalation factors applied to the option periods. Whelan's bid was evaluated at \$1,427,943.27; the remaining bids ranged from \$1,513,161 to \$1,876,365.

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the incumbent contractor was performing under a wage determination of \$4.99 and that its current monthly price was \$40,613 for a minimum annual requirement of 58,731 hours of guard services and 11,143.5 hours of supervisory services. The IFB required a minimum of 54,875.25 hours of guard and supervisory services. GSA concedes that the IFB did not designate which class of services was required and did not contain the DOL definitions of Guard I and Guard II services. The IFB's specifications set out the qualifications and duties of the required personnel, among which the following are pertinent to this case:

1. All personnel must demonstrate prior to assignment, physical, mental and emotional fitness by an examination by a licensed physician and this examination must be evidenced by a Standard Form 78 "CERTIFICATE OF MEDICAL EXAMINATION" submitted to the agency.
2. Prior to assignment, all personnel must be trained, and demonstrate proficiency, in the use of a .38 caliber revolver and such proficiency must be certified by an authorized government examiner. The certificate is valid for one year.
3. The contractor must submit evidence that all personnel to be assigned have undergone an extensive training program for the duties to be performed and have passed a test given by a government examiner. The examination qualification is valid for three years.

The DOL definitions of the guard services are as follows:

"Guard I: Carries out instructions primarily oriented toward insuring that emergencies and security violations are readily discovered and reported to appropriate authority. Intervenes directly only in situations which require minimal action to safeguard property or persons. Duties require minimal training. Commonly, the guard is not required to demonstrate

physical fitness. May be armed, but generally is not required to demonstrate proficiency in the use of firearms or special weapons.

"Guard II: Enforces regulations designed to prevent breaches of security. Exercises judgment and uses discretion in dealing with emergencies and security violations encountered. Determines whether first response should be to intervene directly (asking for assistance when deemed necessary and time allows), to keep situation under surveillance, or to report situation so that it can be handled by appropriate authority. Duties require specialized training in methods and techniques of protecting security areas. Commonly, the guard is required to demonstrate continuing physical fitness and proficiency with firearms or other special weapons."

Although GSA concedes that IBI's bid was responsive on its face, GSA points out that the bid was based on the \$4.26 rate for Guard I services, a fact that IBI confirmed during a meeting on March 25. As GSA was convinced that the solicitation's description of the required services and qualifications for the guards when compared to the DOL definitions of Guard I and Guard II classes, clearly required Guard II personnel, it rejected IBI's bid and made award to the incumbent contractor at a price higher than that of IBI's bid.

IBI agrees that its bid was based on the \$4.26 rate but contends that it proposed to employ guards who would meet the specifications. IBI argues that the DOL definition of Guard I personnel does not preclude Guard I personnel from being required to demonstrate physical fitness and firearms proficiency but only suggests that "commonly" Guard I personnel will not be required to demonstrate physical fitness and that they may be armed. IBI insists that so long as IBI can satisfy the specifications, IBI must be allowed to employ Guard I personnel and pay them the \$4.26 rate. IBI further insists that GSA exceeded its authority in determining that its solicitation required Guard II services because only DOL is empowered to

make such a determination under the Service Contract Act. IBI points out that at the meeting on March 25, the discussion focused primarily on the applicable wage rate and whether Guard I personnel could carry sidearms. Because the contracting officer called the Chief, Wage Determination Branch, DOL and was told that Guard I personnel could carry firearms, IBI states that it left the meeting with the belief that it would be awarded the contract. IBI further contends that the awardee's price, which was only \$7,886 above IBI's price, does not reflect a minimum rate of \$4.99 for its guards because the 73¢ difference between the two rates when multiplied by the 54,875.25 required hours of guard time amounts to \$40,058.75, five times the difference between the two bids. This and the fact that GSA's notice to DOL of its intent to award a service contract showed that if the services were performed by government employees, the guards would be paid \$6.63 as GS-5s and the supervisors would be paid \$8.21 as GS-7s, indicates, IBI contends, that its interpretation of the solicitation was not different from that used by other bidders.

As can be seen from the information provided above, the description of the duties and qualifications of the guards GSA required here and the requirements with respect to training, physical fitness, mental and emotional stability and proficiency in the use of firearms are substantially in excess of those required of Guard I personnel in the DOL descriptions. In addition, the IFB here clearly indicated that the incumbent contractor was bound by the \$4.99 rate for Guard II services. While this IFB does not specifically state that the guards must be informed of the conditions justifying the use of deadly force, it seems to us that the required training in the use of firearms and in search and arrest procedures would necessarily require such information. We therefore conclude that the IFB clearly reflected GSA's need for the services of Guard II personnel. Mullins Protective Services, Inc., B-208674, Dec. 21, 1982, 82-2 CPD ¶ 561.

We think that if IBI left the meeting on March 25 with the belief that it was assured of award, it misunderstood the purpose and scope of the meeting. As this was formally advertised procurement, GSA was not permitted to discuss IBI's bid, other than to verify the wage rate on which it was based, since a bidder may not be allowed to explain its bid after bid opening when to do so would prejudice the

other bidders or affect the responsiveness of its bid. See Hub Testing Laboratories, B-207352, Aug. 17, 1982, 82-2 CPD ¶ 136. Further, we are not persuaded by IBI's argument that the IFB does not prevent a contractor from employing Guard I personnel, give them the training and examinations required of Guard II personnel and then pay them the Guard I wage rate. As pointed out above, the IFB clearly required Guard II personnel and if GSA had accepted IBI's argument, it would seem that IBI's guards after such training and examinations would have to be paid the \$4.99 rate for Guard II personnel. Otherwise, the intent behind the two rates would be frustrated. If IBI disagreed with GSA's determination, it should have appealed to DOL since it is the agency primarily responsible for resolving questions relating to classifications and applicable wage rates. See J.L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 CPD ¶ 99.

IBI's argument that Whelan's price reflects the intent not to pay its guards at the minimum Guard II rate of \$4.99 raises an issue as to Whelan's ability to perform at its bid price. As such it raises a question of responsibility which is for the contracting agency to determine. We will not review an affirmative determination of responsibility except in limited circumstances which are not present here. See Professional Cleaning Janitorial Services, B-209755, Nov. 30, 1982, 82-2 CPD ¶ 493. Moreover, once the contract is awarded, the question whether the contractor will perform in accordance with the specifications is a matter of contract administration, which is also the responsibility of the contracting agency. See Biospherics, Inc.--Reconsideration, B-203419.4, Mar. 16, 1982, 82-1 CPD ¶ 246.

IBI also complains that GSA failed to suspend performance by Whelan during the pendency of this protest which was filed under the Competition in Contracting Act of 1984, Pub. L. No. 98-369, 98 Stat. 1175. The Department of Justice is contesting the constitutionality of certain aspects of this act, including the requirement for an agency to suspend contractor performance when a protest is filed within 10 days of an award. However, the Department of Justice has recently instructed agencies to abide by the act while the litigation continues. In view of this and

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the fact that we are denying the protest we see no need to comment further on this matter. See Lear Siegler, Inc., B-218188, Apr. 8, 1985, 64 Comp. Gen. _____ 85-1 CPD ¶ 403.

The protest is denied.

for Seymour Efen
Harry R. Van Cleave
General Counsel