



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied Sanitation, Inc.

File: B-225988

Date: January 30, 1987

DIGEST

1. Protest that solicitation was defective because it failed to include quality assurance requirements is untimely when it is not filed with either the procuring agency or the General Accounting Office before bid opening, because alleged improprieties that are apparent on the face of a solicitation must be filed by that time.

2. Agency may not reject a bid as nonresponsive because it is not accompanied by evidence indicating that the bidder has all necessary licenses and permits when the solicitation requires only that the contractor, as a matter of performance, furnish copies of any necessary licenses to agency and bidder takes no exception to that requirement on its bid.

DECISION

Allied Sanitation, Inc., protests the award of a contract to Update Carting Corporation under invitation for bids (IFB) No. 526-87-3, covering the removal of hospital waste from the Veterans Administration Medical Center in the Bronx, New York. The solicitation, issued October 30, 1986, with a November 27 opening date, contemplated a 1-year, fixed-price requirements contract.

We dismiss the protest.

Allied, the incumbent contractor and second-low bidder, protested to the agency on December 8, alleging that Update's low bid was too low to permit it to sustain the required level of service while providing lawful disposal of the waste it would collect. In addition, the protester alleged that Allied lacked necessary permits and approvals from New York City. The agency denied this protest by letter dated December 16.

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Now before this Office, Allied raises a new issue: that the IFB was deficient because it failed to incorporate certain quality assurance provisions required by the Federal Acquisition Regulation relating to preferred methods of disposing of potentially infectious hospital wastes; in addition, the protester asserts that Update's bid was non-responsive because it failed to include copies of all of the required permits and approvals.

Our Bid Protest Regulations require that protests based on alleged improprieties apparent on the face of a solicitation be filed either with the procuring agency or our Office before bid opening. 4 C.F.R. § 21.2(a)(1) (1986). We have verified that bid opening took place as scheduled on November 27, 1986. Since Allied's protest concerning the provisions omitted from the IFB was not filed either with the agency or our Office by that date, the protest on this basis is untimely, and we will not consider it. Mid-East Services, Inc., B-223993, Sept. 4, 1986, 86-2 CPD ¶ 264.

With respect to Allied's concern that Update's bid was not responsive because it failed to include copies of all required permits and approvals, as part of the statement of work the solicitation contained a general requirement that the contractor provide, at no cost to the government, all necessary federal, state, municipal, and local licenses and permits. Copies of these were to be provided to the VA Medical Center for reference. We regard this requirement as simply one of the terms of performance; the contractor must have whatever licenses and permits are necessary to perform the contract work, and must furnish a copy of them to the agency. See Fort Wainwright Developers, et al., B-221374.4, et al., June 20, 1986, 86-1 CPD ¶ 573. There was no requirement that the copies be provided with the bid or before award. While the contracting officer properly might have considered the bidder's ability to obtain the licenses in determining whether the firm was responsible, he could not have rejected the bid as nonresponsive since Update took no exception in its bid to the licensing requirement. Moreover, once the contracting officer made an affirmative determination of responsibility we would not review it, since it is our policy not to consider, in most instances, challenges to affirmative determinations of responsibility. 4 C.F.R. § 21.3(f)(5). In denying the agency-level protest, the contracting officer advised Allied that the proposed awardee had been found responsible, having all necessary licenses and permits to perform the services in question.

While Allied did not pursue its allegations regarding the awardee's too-low bid with our Office, we point out that in the absence of a finding of nonresponsibility, a below-cost

bid provides no basis for denying or upsetting an award.
EVCO National, B-220635, Oct. 18, 1985, 85-2 CPD ¶ 427.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned to the left of the typed name.

Ronald Berger
Deputy Associate
General Counsel