



The Comptroller General
of the United States

Washington, D.C. 20548

Wolcott, PL

Decision

Matter of: Al Johnson Reforestry
File: B-227545
Date: October 9, 1987

DIGEST

If a solicitation requires the contractor to obtain a specific license, but does not indicate that the license must be obtained prior to award, the contractor may obtain the license after award. Where the contracting officer reasonably determined that the prospective awardee, who did not then have the license, could obtain it in time to perform, the award to that firm is legally unobjectionable.

DECISION

Al Johnson Reforestry protests the award of a contract to Beebe Forest Service by the United States Department of Agriculture, Forest Service, under invitation for bids (IFB) No. R8-387-10. Johnson maintains that award to Beebe was improper since it had not obtained Georgia pesticide licenses prior to award.

We deny the protest.

The IFB called for the removal of certain trees, along with herbicide treatment of the remaining stumps, in a portion of the Chattahoochee National Forest, Rabun County, Georgia. Under the section headed "General Specifications," the IFB stated:

". . . Contractor [is] required to comply with rules of Georgia Department of Agriculture [Publication No.] 40-21 Pesticide Use and Application. Requirements include a Pesticide Contractor's License, Pesticide Applicator's License and Financial Responsibility."

Bids were opened on June 8, 1987, and Beebe was found to be the apparent low bidder. Following bid opening, the contracting officer determined that Beebe held pesticide licenses issued by South Carolina but not Georgia. The contracting officer also determined that Georgia had a

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reciprocal agreement with South Carolina concerning pesticide licenses, and found that Beebe had filed the necessary applications with Georgia requesting reciprocal certification. Based on these findings, the contracting officer determined that Beebe was responsible and awarded the contract to it on June 22. The record indicates that Beebe received the Georgia licenses approximately 2 weeks after the contract was awarded.

On June 23, Johnson filed its protest with our Office. Johnson argues that Beebe's failure to obtain Georgia pesticide licenses prior to award should have disqualified it from consideration. Performance of the contract has not begun, pending resolution of this protest.

Where a solicitation requires the contractor to obtain a specific license, but does not indicate that the license must be obtained prior to award, the contractor may obtain the license after award. All that is required prior to award is that the contracting officer, in determining the responsibility of the prospective awardee, find that the awardee has the ability to obtain the license in time to perform. See 46 Comp. Gen. 326 (1966); Impact Instrumentation, Inc., B-217291, Feb. 26, 1985, 85-1 C.P.D. ¶ 240; VIP Limousine Service, Inc., B-225639, Jan. 29, 1987, 87-1 C.P.D. ¶ 98.

In this instance the IFB merely required the successful contractor to comply with Georgia Department of Agriculture Publication No. 40-21, and noted that the Publication included requirements for certain pesticide licenses. Prior to contract award, the contracting officer determined that Beebe held valid South Carolina pesticide licenses, that Georgia and South Carolina had reciprocal agreements concerning pesticide licenses, and that Beebe had submitted to Georgia officials the necessary applications requesting reciprocal certification. Based on these findings, the contracting officer concluded that Beebe would be able to comply with the solicitation's requirements prior to contract performance and found Beebe responsible. Beebe, in fact, obtained the required licenses 2 weeks after award. We therefore find no basis to question the award.

In arriving at our conclusion, we have not overlooked the protester's reliance on a local regulatory provision which authorizes the Georgia Department of Agriculture to deny a license to anyone who "acted in the capacity of, or advertised as, a pesticide contractor or applicator without the required licenses issued by the Commissioner." Here, the Georgia Department of Agriculture chose not to exercise its authority to deny the pesticide licenses. In general, a contractor's compliance with state and local requirements is

a matter which must be resolved between the contractor and the state or local authorities, not by federal officials. See, e.g., Lewis & Michael, Inc., B-215134, May 23, 1984, 84-1 C.P.D. ¶ 565; Central Forwarding, Inc., B-222531.4, Aug. 4, 1986, 86-2 C.P.D. ¶ 142. If enforcement of such state or local requirements prevents a firm from performing the contract, the agency may terminate the contract for default. See, e.g., Cadillac Ambulance Service, Inc., B-220857, Nov. 1, 1985, 85-2 C.P.D. ¶ 509.

The protest is denied.

for *Seymour Elias*
James F. Hinchman
General Counsel