



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-176961

Overruled in part by 55 Comp. Gen. 13-184865, May 3, 1976
 JAN 2 1973

Industrial Maintenance Services,
 Incorporated
 Post Office Box 1551
 Dothan, Alabama 36301

Attention: Mr. J. P. Holloman
 President

Gentlemen:

Reference is made to your letters dated September 8 and November 9, 1972, with enclosures, protesting against award of a contract to any other firm under invitation for bids No. DABBL9-73-B-0002, issued at Fort Belvoir, Virginia.

The solicitation, covering custodial services at DeWitt Army Hospital, Fort Belvoir, Virginia, was issued August 1, 1972. Bids were opened on August 31, 1972, and eight bids were received. Evaluation of bids resulted in the determination that Old Atlantic Services, Incorporated (Old Atlantic), was the low bidder at \$265,019, Advance Building Maintenance Company (Advance), was second low at \$284,416.74, and your firm was next low at \$294,429.84. However, Old Atlantic claimed it had made a mistake and was permitted to withdraw its bid. Therefore, the contracting officer requested a preaward survey to determine Advance's responsibility as a prospective contractor. In a report dated September 22, 1972, the Chairman of the Pre-Award Survey Board recommended award. Based upon this recommendation, the contracting officer has found Advance responsible.

You contend that this bid is nonresponsive to the solicitation because of the bidder's failure to qualify under the requirement of paragraph C-8 of the solicitation, which provides as follows:

"C.8 QUALIFICATIONS: Bidders shall attach a statement of their qualifications, number of years in this type of business, location of their office and plant, name and location of bank where account is maintained, references as to firms for whom custodial services have been satisfactorily performed, particularly Federal Government

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references, if any. BIDDERS SHOULD FURNISH EVIDENCE THAT WITHIN THE LAST TWO YEARS IMMEDIATELY PRECEDING THE ADVERTISING OF THIS CONTRACT, THEY HAVE SATISFACTORILY PERFORMED CLEANING OPERATIONS IN GENERAL HOSPITALS (250 BEDS OR MORE) SIMILAR IN SCOPE AND TYPE TO THAT REQUIRED IN THIS BIDDING DOCUMENT."

You were furnished a copy of the contracting officer's statement and a copy of the administrative office's legal opinion. In a letter dated November 9, 1972, you replied to the administrative position that the experience requirement relates to the matter of responsibility and, therefore, literal compliance therewith is not required. You argue that since the requirement is explicit in making the stated experience a prerequisite to award, a noncomplying bidder cannot qualify although he is considered otherwise responsible. In the alternative, you argue that if the requirement is considered a matter of responsibility, it is restrictive of competition and the invitation should be cancelled and the procurement readvertised. In this connection, you cite B-140481, September 8, 1959 (published at 39 Comp. Gen. 173) and an article on Responsibility of Bidders, The Government Contractor Briefing Papers, No. 72-4, August 1972.

We have recognized that experience requirements directed primarily to the experience of a bidder properly are a matter of responsibility. See B-175254, August 16, 1972, 52 Comp. Gen. _____. Since the subject procurement is for services, it is clear that the experience requirement relates to the responsibility of the bidder. Furthermore, it is the position of our Office that where such requirements are properly included in a solicitation, responsible bidders may not be rejected merely for failure to meet the literal requirements of such provisions, but that there must be a specific determination of responsibility based upon consideration of the qualifications of the particular bidder. 40 Comp. Gen. 106 (1960). As noted above, an affirmative determination has been made with respect to Advance. Therefore, it would not be proper to reject Advance's bid even though Advance may not be in literal compliance with the requirement.

However, you contend that if the experience requirement is related to responsibility, it was unduly restrictive and the invitation should be cancelled, citing 39 Comp. Gen. 173 and the Briefing Paper article. In that case, which is also the subject of the quote from the article referred to by you, we concluded that the particular requirement could be considered unduly restrictive because only four firms in the United

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States could qualify as having installed the comparatively new and intricate system. However, we also stated (p. 178):

"Recognizing the desirability, both from the standpoint of administrative convenience and from that of prospective bidders who may be saved useless expense and effort, of including in invitations for bids some notice to bidders of minimum standards to be applied in determining the qualifications of bidders, we feel nevertheless that the statement of such qualifications should not be considered as having the effect of transforming the purely factual question of responsibility into a legal question of conformity of the invitation."

While we are not convinced as to the necessity for the inclusion of paragraph C-8 in the subject invitation, we are unable to conclude that its inclusion was clearly unnecessary or so restrictive as to impair competitive bidding since 8 bids were received.

Accordingly, your protest is denied.

Very truly yours,

R.F.KELLER
Deputy Comptroller General
of the United States