

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-184439

DATE: December 29, 1975

MATTER OF: National Ambulance Co., Inc.

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DIGEST:

1. IFB provision that successful bidder meet all requirements of Federal, State or City codes does not justify rejection of bid for failure to have city license to operate ambulance service since need for license under such general requirement is matter between local governmental unit and contractor. However, where bidder conditions bid upon possession of license, such qualification renders bid nonresponsive.
2. Fact that bidder alleges it was told by procuring agency personnel to include cover letter with bid which conditioned bid upon possession of local license, resulting in rejection of bid, does not alter nonresponsiveness of bid as Government is not responsible for negligence of employee absent specific statutory provision.

On June 6, 1975, the Veterans Administration Hospital, Vancouver, Washington (VA), issued invitation for bids (IFB) No. 683-1-76 for ambulance services.

The IFB required that the "successful bidder shall meet all requirements of Federal, State or City codes regarding operations of this type of service." Bids were opened on June 18, 1975, and the low bid was submitted by National Ambulance Co., Inc. (National). National submitted with its bid a cover letter which stated:

"This bid is contingent upon receiving approval from the proper authorities to pick up Veteran's Administration authorized patients within the Vancouver City Limits."

At the time National submitted its bid, it did not possess a city license to operate an ambulance in the city limits. On June 23, 1975, National applied for a license from the city council but the application was denied.

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Accordingly, on June 30, 1975, award was made to American Ambulance Company, Inc. (American), as the low responsive, responsible bidder.

National has protested the rejection of its bid to our Office contending that possession of the Vancouver city license was unnecessary to show its qualifications as a responsible bidder.

Our Office has considered numerous cases in the past involving license requirements under VA ambulance service solicitations. The general rule enunciated in these cases is that where the IFB requires a bidder to possess a specific license, the failure of the bidder to have such a license at the time of award is a bar to an affirmative finding of responsibility by the contracting officer. However, where the IFB employs only general language, as here, the failure of a bidder to possess a certain permit or license is not a bar to an award to that bidder. This is so because whether a bidder needs a license or permit to perform a Federal contract is a matter between the bidder and the local governmental unit and not for resolution by the contracting officer. 51 Comp. Gen. 377 (1971) and 53 Comp. Gen. 51 (1973). Therefore, based on the foregoing precedents, the failure of National to have the Vancouver city license would not have been sufficient, standing alone, to require rejection of its bid.

However, the act of attaching to its bid the aforementioned cover letter making its bid contingent upon receiving the city license had the effect of qualifying National's bid and thereby rendered the bid nonresponsive. By qualifying its bid on the basis that it would accept the award only if it obtained the license, National obtained the ability to accept or reject an award after bid opening, depending upon which action would be to its advantage. A bid must be rejected where the bidder imposes conditions which would modify requirements of the IFB or limit rights of the Government so as to give such bidder an advantage over other bidders. S. Livingston & Son, Inc., B-183820, September 24, 1975, 75-2 CPD 179.

National argues that it was advised to furnish the cover letter by a VA employee and that such action on the part of the Government was misleading, resulting in the rejection of its bid.

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It is well settled that in the absence of a specific statutory provision, the Government is not responsible for the malfeasance, misfeasance, negligence or omissions of duty of its agents or employees. Durable Metal Products Company, B-182864, November 21, 1975.

For the foregoing reasons, we find the rejection of National's bid to have been proper and the protest is denied.

Deputy

R. F. K. L. M.
Comptroller General
of the United States