

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

FILE: B-186881

DATE: September 16, 1976

MATTER OF: Worcester Electrical Associates

61501

98022

DIGEST:

1. Contention that bidder is not capable of performing contract work in an acceptable manner is a matter of responsibility and will not be reviewed by GAO barring an allegation of fraud on part of procuring officials.
2. Whether or not a bidder possesses the required local and state licenses needed to perform the contract work is a matter of responsibility which may be resolved by the bidder after bid opening.
3. Contention that bidder is ineligible for a small business set-aside award because it is not a special trade contractor as specified by the solicitation is without merit where sole purpose of provision is to establish the size standard of the procurement and the bidder has already been determined to be small business by SBA.

Worcester Electrical Associates (Worcester) has protested the proposed award of a contract to Bick-Com Corporation (Bick-Com) under Veterans Administration Invitation for Bid No. 518-92-76 issued May 12, 1976, to furnish and install an underground electrical distribution system to correct electrical deficiencies at and to furnish emergency generators for the Veterans Administration Hospital, Bedford, Massachusetts.

Worcester first contends that Bick-Com as a general contractor is not capable of performing the contract work, over 80 percent of which is electrical work, in an acceptable manner. This is a matter of responsibility. The contracting officer has not yet made a responsibility determination as to Bick-Com. Unless he does so, Bick-Com will not be eligible for award and the protest becomes moot. If he finds Bick-Com responsible, we will not review

the determination barring an allegation of fraud on the part of the procuring officials or unless the solicitation contains definitive responsibility criteria--such as a requirement for specific experience--which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; United Hatters Cap and Millinery Workers International Union, 53 Comp. Gen. 931 (1974), 74-1 CPD 310. We do not find either of the exceptions applicable here.

Worcester next contends that Bick-Com is incapable of meeting the requirement of the IFB that the contractor perform at least 30 percent of the site work with his own forces, since, as noted, more than 80 percent of the work is electrical. Bick-Com has committed itself to this requirement, and, therefore, its bid cannot be regarded as non-responsive on this account. The firm's ability to meet the requirement is a matter of responsibility which is subject to the standard discussed above. In passing, we find no basis to disagree with the VA's conclusion that Bick-Com will be able to hire the necessary qualified help to perform successfully and specifically to meet the 30 percent requirement.

Worcester also contends that Bick-Com is not eligible for award because the IFB limits the competition to firms who have a State of Massachusetts electricians license at the time of bid opening. In support of its position, Worcester points out that by signing the bid the bidder certifies that:

- "1. He is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration or repair of buildings, structures, communications facilities or other engineering projects including furnishing and installing of necessary equipment; or
2. If newly entering into a construction activity, he has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; * * *

Worcester reasons that if newly entering firms must have "required licenses" it follows that all construction firms must have such licenses at the time the bid is signed. Thus, according to Worcester, even if Bick-Com can show that it is not newly entered into the electrical construction contracting business,

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it still must have the "required license" of an electrical contractor, inasmuch as the vast majority of the work to be done is electrical. Since Bick-Com lacks the requisite licensed electrician (Massachusetts requires a corporate officer to hold the license, Chapter 141, Massachusetts Code Annotated, 1972), Worcester contends that Bick-Com cannot certify that it meets the licensing requirement.

VA states that having necessary licenses is a matter of responsibility and in its judgment, Bick-Com will be able to obtain any licenses needed in order to permit it to perform.

We do not agree that the quoted provision requires that a bidder have any necessary licenses at the time he submits his bid. In general it is our position that it is the bidder's responsibility to have whatever licenses may be needed to permit performance. We have held that it would be unreasonable to require the contracting officer to decide what licenses are necessary and whether a bidder will be able to obtain them. If, in fact, a contractor cannot obtain needed undesignated licenses and is thereby prevented from performing the contract, the contractor may be defaulted.

Nevertheless, we have recognized that a contracting officer may, if he chooses, specify as a matter of responsibility one or more licenses or permits which the contractor must have at the time he undertakes performance. 53 Comp. Gen. 51 (1973). In our view the solicitation provision here is too general to come within that rule. It does not specify any particular license or permit. Nor, in fact, do we read it as requiring that the bidder have any license at the time he submits his bid; it merely requires those newly entering into a construction activity to have made all necessary arrangements for required licenses. In any case, as already noted, we have held such a requirement--even when specific licenses are identified--to be a matter of responsibility so that it could not be required as of bid opening. Victory Van Corporation, 53 Comp. Gen. 750 (1974), 74-1 CPD 178.

Worcester also contends that Bick-Com is ineligible to receive the award because Bick-Com is not a "special trade contractor." Worcester relies on the language in the specifications and Small Business Administration (SBA) regulations (13 C.F.R. Chapter 1) as supporting its assertion that "special trade contractors" are required on this project. However, the provision regarding special trade contractors is included only for the purpose of establishing the size of the "concern" for purposes of qualifying as a small business, and does not otherwise limit a firm's eligibility to compete for award. Since SBA has already found Bick-Com to be

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small, its status--or lack thereof--as a special trade contractor is irrelevant.

The protest is denied.


Deputy Comptroller General
of the United States