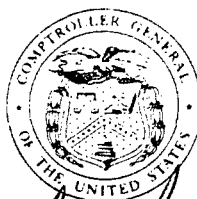


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**DECISION**



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

*[Protest Alleging Awardees Were Not Eligible]*

FILE: B-199975

DATE: November 21, 1980

MATTER OF: R. E. Skinner & Associates

*DL603944*

**DIGEST:**

1. Where RFP only requires offeror to have licensed land surveyor assigned to project, whether offeror's firm or corporation is licensed in compliance with State or local laws and regulations does not affect eligibility for award as compliance is matter for resolution between State or local authorities and contractor.
2. Neither submission of offer below Government estimate, nor excessively low offer, nor protester's view that offeror cannot perform contract, is basis for rejection of offer. Rejection of offer alleged to be too low or because of prospective inability of bidder to perform contract requires determination of nonresponsibility. GAO does not review affirmative responsibility determinations, absent circumstances not present here.

R. E. Skinner & Associates (Skinner) has protested the awards made by the United States Department of Agriculture, Forest Service, under numerous requests for proposals (RFP's) for surveying services in various National Forests.

*AGC0063*

Skinner received the notice of the awards on August 7, 1980, and protested to our Office on August 14, 1980, and therefore the protests are timely.

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The issues raised by Skinner are similar for all the RFP's and awardees and, therefore, we will treat all the protests as one.

All the RFP's contained the following language:

<u>"Evaluation Criteria</u>	<u>Relative Weight</u>
"I. <u>Bona fide Office in State(s)</u> <u>Where Project is Located -</u> Only offerors located in or having a bona fide office in one of the States of Oregon, Washington, California, Idaho or Nevada will be considered. However, the offeror must have land surveyor(s) assigned to this project who are licensed to practice in the state(s) in which the project is located.	0 (Yes or No requirement)"

Further, under "Definitions," the following was stated:

- "(1) Bona fide Office - A 'bona fide' office is an office which is established for the purpose of generating business as well as providing an operating base for personnel performing local work.
- "Characteristics of a 'bona fide' office area:
- "1. The firm represented by the office must have principals or key personnel who are professionally licensed in the required discipline in the state where the office is located.
  - "2. The office must be licensed to conduct business at the stated location by the local

business licensing authority  
(city-county) if such an  
authority exists."

Skinner argues that the various awardees were not eligible for award because they were not properly licensed under Oregon State requirements and, therefore, could not have a "bona fide office" in the State of Oregon. Skinner contends that none of the firms were registered with the Oregon Board of Engineering Examiners Office.

The Forest Service has responded that the RFP's only required that offerors have a registered land surveyor assigned to the project who is licensed in the State where the project was located and that all awardees complied with the requirement. Further, all awardees have offices located in Oregon. Therefore, the Forest Service found all awardees qualified and acceptable under the terms of the RFP.

We agree. While Skinner has protested that the firm or corporation doing business in Oregon must be licensed under State law, the RFP only required a licensed land surveyor be assigned to the project and the local office. Whether a firm complies with a State's or locality's laws or regulations is between the State authority and the contractor. The general rule applicable to these situations was explained in Career Consultants, Inc., B-195913, March 25, 1980, 80-1 CPD 215, as follows:

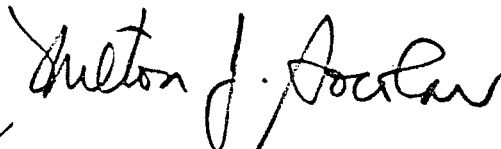
"\* \* \* Where a solicitation contains only a general requirement that the contractor have all necessary licenses and permits to perform the contract but does not indicate a specific State or local license which is required, we have consistently held that a contracting officer should not have to determine what the State or local requirements may be, and the responsibility for making such a determination is correctly placed with the prospective contractor. 53 Comp. Gen. 51 (1973) and cases cited therein.

We have also held that the failure of a low bidder to obtain a license required under State or local law is not a proper basis upon which to reject the low bidder where the solicitation merely states in general terms that all State or local licenses must be obtained by the successful bidder, and that such failure could not affect the eligibility of a bidder to be awarded a Government contract but was rather a matter to be resolved between the contractor and State and local authorities. See B-165274, May 8, 1969; B-125577, October 11, 1955."

Finally, Skinner contends that the awardees engaged in "predatory" or below-cost pricing and cannot perform the contracts at the prices offered.

The submission of an offer below the Government estimate, even a below-cost offer, is not a proper basis upon which to challenge the validity of a contract award. Inter-Con Security Systems, Inc., B-189165, June 15, 1977, 77-1 CPD 434. Proper rejection of an offer as extremely low requires a determination that the offeror is nonresponsible, that is, that the offeror cannot or does not intend to perform in accordance with contract requirements. Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. Our Office does not review protests of affirmative determinations of responsibility, which would necessarily be involved here as a prerequisite to award, unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Neither exception is applicable in this case.

The protest is denied.



For the Comptroller General  
of the United States