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**DECISION**



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

FILE: B-201365

DATE: May 4, 1981

MATTER OF: Allied Security, Inc. of Maryland

DIGEST:

*Protest of*

1. When protester challenges specification as unduly restrictive, agency must establish prima facie support for contention that restriction is reasonably related to its needs. Protester, who retains burden of proof, has not met it in alleging that 80-hour training requirement for building guards is unduly restrictive when director of security for three out of four buildings in question specifically requests such training and nine firms respond to invitation for bids.
2. Contractor selected for award of guard services contract may correct clerical error indicating that it was in business of offering quasi-military armed forces, in violation of Anti-Pinkerton Act, since information does not involve any material performance requirements, and contracting officer may investigate further whether firm actually was in such business.
3. Bidder who takes no exception to requirement that building guards must undergo 80 hours of training is contractually obligated to provide employees who have completed such training. Whether employees have actually had such training is matter of contract administration, not for consideration under Bid Protest Procedures.

Allied Security, Inc. of Maryland protests an award by the General Services Administration (GSA) of a contract

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for guard services in four buildings in southwest Washington, D.C., to Atlas Guard Service, Inc., the low bidder under solicitation No. GS-11C-00462.

Before the December 10, 1980 bid opening, Allied filed a protest alleging that the requirement that each employee of the successful contractor complete 80 hours of basic training unduly restricted competition. In the past, Allied stated, only 40 hours of training had been required; the additional time requirement represented a needless expenditure of Federal funds and overstated GSA's minimum needs, particularly since the guards in question were to be unarmed.

In addition, after bid opening, Allied protested on grounds that Atlas had certified that it provided "quasi-military armed forces" in violation of the so-called Anti-Pinkerton Act, 5 U.S.C. § 3108 (1976). Allied also contends that GSA is not enforcing the 80-hour training requirement, since Atlas has hired former Allied employees who do not satisfy it. This requirement affected its own price, which was four cents an hour higher than that of Atlas, Allied states, and if GSA is prepared to relax or waive the requirement, Allied also would bid lower. Allied therefore requests that the contract be terminated and a new solicitation be issued which reflects GSA's actual needs.

Responding to the protest, GSA states that the requirement for 80 hours of training was included in the solicitation at the specific request of the Director of Security for the Department of Transportation, which occupies three of the four buildings covered by the contract (the remaining building is shared by GSA with other agencies). The security director believes the training is necessary to enable the guards to operate more diplomatically and efficiently without firearms. GSA reports that the contracting officer concurred in that requirement after consultation with his own technical personnel and those of the Department of Transportation. Imposition of the requirement was within its discretion, GSA concludes, and did not unduly restrict competition since nine firms responded to the invitation for bids.

We agree with GSA. We have consistently stated that contracting agencies are primarily responsible for determining the needs of the Government and the methods for accommodating those needs. When a protester challenges

a specification as unduly restrictive, the agency must establish prima facie support for its contention that the restriction is reasonably related to its needs. The burden of proof, however, remains on the protester to show that the requirement complained of is clearly unreasonable. Oshkosh Truck Corporation, B-198521, July 24, 1980, 80-2 CPD 161.

In a memorandum included in the record, the individual charged with maintaining security in three of the buildings to be guarded has indicated a need for extended training in the areas of note taking and report writing; intrusion alarm systems; responding to crimes and conducting incident inquiries; handling disorderly conduct, civil disturbances, and other incidents; providing preliminary medical assistance; human relations; the role of local, state, and Federal law enforcement agencies; and self defense. Since guard services for all four buildings, which are proximately located, are being procured under one contract, we do not believe it is unreasonable for GSA to impose the same requirements for all guards. Allied has not shown that the training is not reasonably related to the duties which the guards must perform or that such training can be satisfactorily completed in less than 80 hours. Allied therefore has not met its burden of proof on this point.

As for the furnishing of quasi-military armed forces, GSA acknowledges that in its bid Atlas had checked the box indicating that it was in the business of offering such services. But in a letter dated December 16, 1981, Atlas confirmed that it had made a clerical error and that it was not in such a business. Award was made on February 12, 1981. GSA argues that representations and certifications required by a solicitation are matters of responsibility, rather than responsiveness, and therefore Atlas' furnishing and GSA's acceptance of the correction before award was legally permissible.

It is generally true, as GSA states, that certifications called for by Government solicitations involve bidder responsibility rather than responsiveness. See, e.g., L. Reese & Sons, Inc., B-182050, November 11, 1974, 74-2 CPD 255. On occasion, a solicitation will contain a certification requirement that, because it involves the bidder's commitment to meet certain contract performance requirements, involves bid responsiveness. See, e.g., St. Louis Ship, B-191847, August 4, 1978, 78-2 CPD 89. The

Anti-Pinkerton clause of this solicitation, however, does not appear to involve any material performance requirements. It merely asks the bidder to indicate whether it is in the business of offering a quasi-military armed force. While a bidder which in fact offers such services would be ineligible for award, we see nothing in the clause or the solicitation which would require that determination of eligibility be based solely on the bidder's indication. In this respect, we believe a contracting officer, despite a negative representation, could nonetheless pursue the matter if he had reason to believe the bidder did engage in providing quasi-military forces. Similarly, we do not believe an affirmative representation automatically requires bid rejection. Rather, we believe the contracting officer may investigate further to determine if in fact the bidder offers the type of services to which the Anti-Pinkerton Act is directed, or if the bidder made an erroneous representation. Cf., Cabrillo Food Service, Inc., B-185172, August 2, 1976, 76-2 CPD 107, where the contracting officer permitted a bidder who allegedly erred in certifying itself as a large business to change its certification.

Thus, we find no basis to object to GSA's permitting correction of the bid in this respect.

Finally, Atlas took no exception to the requirement that its employees undergo 80 hours of training before entrance on duty, and therefore is contractually obligated to provide employees who have completed such training. Whether Allied actually does so is a matter of contract administration, and must be dealt with by GSA and not under our Bid Protest Procedures. Anderson's Complete Cleaning Service, B-200261, September 23, 1980, 80-2 CPD 223; see also Potomac Documentation and Design, Inc., B-197347, B-197349, September 19, 1980, 80-2 CPD 211. The protest on this basis is dismissed.

On the remaining bases, the protest is denied.



Acting Comptroller General  
of the United States