

DECISION



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

FILE: B-207314

DATE: May 18, 1982

MATTER OF: Kenilworth Trash Company

DIGEST:

1. In absence of solicitation provision requiring bidder to possess specific license, contracting officer is not required to determine whether bidder intends to comply with local licensing requirements in determining bidder's eligibility for contract award.
2. Protest concerning bidder's ability to meet contractual requirements is not for consideration as GAO will not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.

Kenilworth Trash Company protests the proposed award of a contract to Sloan & Sons Trucking under solicitation No. DADA15-82-B-0041 issued by the Department of the Army. The contract is for the removal of trash and debris from Walter Reed Army Medical Center's Glen Haven Housing Development in Montgomery County, Maryland. Kenilworth questions whether Sloan is licensed by the county to operate as a trash remover and contends that if Sloan is not so licensed, it should not be awarded the contract. Kenilworth further questions Sloan's capability to perform the contract. The protest is denied in part and dismissed in part.

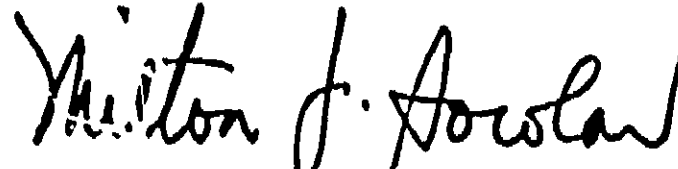
Generally, questions regarding whether a bidder intends to comply with Federal, State or local licensing requirements need not be considered by the contracting officer in determining a bidder's eligibility for award. Jekyll Towing and Marine Services Corporation, B-199199, December 2, 1980, 80-2 CPD 413. An exception to the

general rule, however, is where a solicitation provision requires that a bidder possess a specific license or permit in order to be eligible for award. In such a case, the contracting officer is required to determine whether the bidder meets the specific requirement prior to making an award. Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132. Here, Kenilworth does not allege that Sloan does not possess a specific license or permit required by the solicitation to be held as a condition of contract award; rather, Kenilworth merely questions whether Sloan will comply with any applicable local licensing requirements. Since there is no allegation that Sloan does not comply with a specific requirement set forth in the solicitation, whether Sloan will meet whatever local licensing requirements may exist has no bearing on the validity of an award to Sloan. Therefore, this aspect of Kenilworth's protest on this issue is without merit. See American Environmental Services, B-205590, December 23, 1981, 81-2 CPD 492.

Kenilworth's concern regarding Sloan's ability to perform the contract involves a matter of Sloan's responsibility. An affirmative determination of responsibility must be made by the contracting officer prior to award. Defense Acquisition Regulation § 1-904.1 (1976 ed.). Although it appears that such a determination has not yet been made here, our Office will not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Microtech Industries, Inc., B-203473, October 1, 1981, 81-2 CPD 269. Neither is the case here. Kenilworth has not alleged that any definitive responsibility criteria have not been applied and does not contend that the actions of the agency are tantamount to fraud. Consequently, this issue is not for our review.

As it is clear from the protester's initial submission that its protest is without legal merit, we have not requested a report from the agency. Wilderness Research Institute, Inc., B-203326, June 19, 1981, 81-1 CPD 512.

The protest is summarily denied in part and dismissed in part.

for 
Comptroller General
of the United States