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DECISION

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

FILE: B-213136

DATE: November 18, 1983

MATTER OF: Martin Electric Company, Inc.

DIGEST:

1. Absent solicitation provision requiring bidders to possess specific license, bidder's lack of state license does not bar contract award to bidder.
2. GAO will not review affirmative determination of responsibility except in limited circumstances.

Martin Electric Company, Inc. (Martin), protests the award of a contract to Williams Electric Company of Fort Walton, Florida (Williams), the low bidder under Naval Facilities Engineering Command (Navy) invitation for bids (IFB) No. N62474-82-B-0915.

Martin alleges that Williams is not qualified to perform the contract and does not have the requisite California license to perform the contract.

The protest is denied in part and dismissed in part.

Concerning Martin's protest that Williams does not have a license required by California law, a contracting officer is not required to consider a bidder's intent to comply with a state licensing requirement unless the solicitation expressly requires the bidder to possess a state license. John Baker Janitorial, Inc., B-206292, February 22, 1982, 82-1 CPD 157. Martin does not contend that the IFB required a California license. Williams' lack of a license is, therefore, a matter to be resolved between Williams and the state of California. It does not bar the Navy from awarding a contract to Williams. Professional Cleaning Janitorial Services, B-209755, November 30, 1982, 82-2 CPD 493. Thus, we deny this aspect of Martin's protest.

Martin's concern regarding Williams' qualifications to perform the contract involves a matter of Williams' responsibility. Kenilworth Trash Company, B-207314, May 18, 1982, 82-1 CPD 480. The award of a contract necessarily

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includes the contracting officer's determination that the awardee is responsible. Defense Acquisition Regulation (DAR) § 1-904.1 (1976 ed.). Kenilworth Trash Company, supra.

Our Office will not review a contracting officer's determination that a prospective contractor is responsible unless there is a showing that the solicitation contains definitive responsibility criteria which have not been applied or that the determination was made fraudently or in bad faith. 4 C.F.R. § 21.3(g)(4), added by 48 Fed. Reg. 1932 (1983); Merchants Rent-A-Car, Inc., B-211934, June 15, 1983, 83-1 CPD 659. Neither exception applies here. Therefore, we will not consider this aspect of Martin's protest.

for *Harry R. Van Cleave*
Comptroller General
of the United States