

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

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FILE: B-213953**DATE:** January 9, 1984**MATTER OF:** Mardan Marine, Ltd.**DIGEST:**

GAO will not consider a protest that an agency should have exercised a contract option instead of issuing a new solicitation where the option is exercisable at the sole discretion of the government, since this is a matter of contract administration.

Mardan Marine, Ltd. protests the decision of the Naval Supply Center, Portsmouth, Virginia not to exercise an option in contract No. N00189-83-D-0153 for an additional 1-year performance period. The contract is a requirements type for watertight closure repairs. The Navy decided, for various reasons, to recompute the requirement.

Where as here, an option is exercisable at the sole discretion of the government, a decision not to exercise the option is a matter of contract administration and not one that will be considered under our Bid Protest Procedures. Sentinel Electronics, Inc., B-212770, December 20, 1983, 83-2 CPD ____.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel

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DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548~~27772~~
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FILE: B-213943

DATE: January 9, 1984

MATTER OF: Metropolitan Ambulance Service, Inc.

DIGEST:

Allegation that a firm does not comply with a solicitation's general licensing requirement does not provide a legal basis to object to award to that firm, since the matter is one to be resolved between state and local authorities and the contractor, and only in limited situations relates to the finding that the bidder is responsible, which, in turn, GAO does not generally review.

Metropolitan Ambulance Service, Inc. protests the award of contracts for ambulance services to Lexington Medical Transportation Services and Suburban Ambulance Service under invitation for bids (IFB) Nos. 596-16-84 and 597-17-84 issued by the Veterans Administration Medical Center, Lexington, Kentucky. Metropolitan complains that neither awardee was licensed by the Commonwealth of Kentucky to operate such services at the time the awards were made. We summarily deny the protest.

Each invitation contained the following provision regarding bidders' qualifications:

"a. Bids will be considered only from bidders who are regularly established in the business called for and who are financially responsible and have the necessary equipment and personnel to furnish service in the volume required for all the items under this contract. Successful bidder shall meet all requirements of Federal, State or City codes regarding operations of this type of service. Successful bidder must be in full compliance with the standards designated as 'conforming' by the State."

The protester alleges that the awardees were ineligible because they did not possess state and local licenses to operate ambulance services which, Metropolitan asserts, are required by the above provision.

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The awardees' failure to have the noted licenses does not provide a legal basis to object to the contract awards. In Goodhew Ambulance Service, Inc., B-209488.2, May 9, 1983, 83-1 CPD 487, we considered the same invitation provision in the context of a licensing requirement, and noted that the provision establishes, at best, only a general requirement that the contractor obtain all necessary licenses and permits. In such a case, the matter is one to be resolved between the contractor and state and local authorities; the contracting officer should not have to determine what the state or local requirements may be, and the responsibility for making such a determination therefore is placed on the contractor. See Career Consultants, Inc., B-195913, March 25, 1980, 80-1 CPD 215. In contrast, where an invitation requires that bidders for that specific procurement have a particular license or permit, compliance is a matter of bidder responsibility and thus a prerequisite to award. See Harris Systems of Texas, Inc.; Anti-Pest Co., Inc., B-208670; B-208809, April 13, 1983, 83-1 CPD 392.

There is one exception to the rule precluding the contracting officer from determining a bidder nonresponsible for failure to possess a particular state or local license under a solicitation's general licensing requirement. That is where the contracting officer reasonably determines, based on indications from appropriate authorities, that enforcement attempts by those authorities are likely and there is a reasonable possibility that such enforcement attempts could interrupt and delay performance under the contract if awarded to the unlicensed contractor. See What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD 179. No such circumstances are present here, however. The contracting officer found both awardees acceptable under the invitation provision in issue, and determined that they otherwise were responsible business concerns. Our Office does not review affirmative determinations of responsibility unless fraud or bad faith by procuring officials is shown or definitive responsibility criteria allegedly were not applied. Pacific Consolidated Services, Inc., B-204781, March 10, 1982, 82-1 CPD 223.

B-213943

The protest is denied.

for Milton J. Fowler
Comptroller General
of the United States