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

FILE: B-216813   **DATE:** November 6, 1984

MATTER OF: New Texas Corporation

DIGEST:

1.   Solicitation provision requiring bidders to
      obtain necessary licenses and/or permits to
      perform contract is a general licensing
      requirement and is a matter to be resolved
      between the bidder and state or local
      authorities and is not a matter that the
      contracting officer must consider in making
      the award.

2.   Submission of allegedly below-cost bid does
      not provide a basis for challenging the award
      of a contract.

3.   A contract award to a bidder necessarily
      includes the contracting officer's finding
      that the bidder is responsible. GAO does not
      review affirmative determinations of respon-
      sibility unless there has been a showing of
      possible fraud or bad faith on the part of
      procurement officials or that definitive
      responsibility criteria were not applied.

     New Texas Corporation (New Texas) protests the award
of a contract to A & J Security Guard Services (A&J) under
the United States Department of Justice, Immigration and
Naturalization Service invitation for bids (IFB) No. DLS
5-85 for unarmed guard services at the Port Isabel Service
Processing Center, Los Fresnos, Texas. New Texas claims
that A&J does not have the requisite Texas permit to per-
form this contract and that its bid price is insufficient
and unrealistic.

     The IFB required the contractor to be licensed as a
qualified guarding service company and to supply a
notarized copy of that license prior to award. The
provisions of the IFB further required that the contractor

would be responsible for obtaining all additional necessary licenses and permits for the State of Texas. New Texas claims that A&J has not obtained a Texas license, and therefore, A&J should not have been awarded the contract.

An IFB provision which requires a bidder to possess a specific license constitutes a definitive responsibility criterion, compliance with which is a necessary prerequisite to award. The specific requirement that the bidder be licensed as a qualified guarding service company is such a definitive criterion. A&J is licensed by the State of Florida and the record shows that a notarized copy of that license was furnished with the bid as required.

We view the responsibility to obtain any necessary additional licenses required by the State of Texas as a general licensing requirement only. Compliance with a general licensing requirement is not a matter that the contracting officer must consider prior to making an award, because that matter is to be resolved between the contractor and state or local authorities. Nevertheless, if the contracting officer has reason to believe that an unlicensed bidder's performance is likely to be frustrated by the enforcement of state or local licensing requirements, he may find the bidder nonresponsible. Nor-Cal Security, B-208296, Aug. 3, 1982, 82-2 CPD ¶ 107. The award of the contract to A&J indicates that the contracting officer had no reason to believe that A&J could not perform the contract as required.

New Texas also alleges that A&J's bid price is unrealistically low, thereby rendering the bid nonresponsive. This is not a valid basis to challenge an award since a below-cost bid is not illegal and an award cannot be withheld merely because the low bid is allegedly below cost. Zimmerman Plumbing and Heating Co., B-211879, June 24, 1983, 83-2 CPD ¶ 16. Further, whether the low bidder can adequately perform the contract at the bid price is a matter of responsibility, to be determined by the contracting officer. Here, the contracting officer's decision to award a contract to A&J necessarily included a finding that A&J is responsible. This Office will not disturb a contracting officer's affirmative determination that a firm is responsible absent a showing of possible fraud or bad faith on the part of the contracting officer or that definitive responsibility criteria were not applied. Lake Shore, Inc., B-213877, Dec. 22, 1983, 84-1 CPD ¶ 14. New Texas has not demonstrated that any of these exceptions applies.

The protest is dismissed.

Harry R. Van Cleve
General Counsel