

**DECISION**



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

01-20  
J. J. I  
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**FILE:** B-216534 **DATE:** January 22, 1985  
**MATTER OF:** Old Dominion Security

**DIGEST:**

1. GAO will not review an affirmative determination of responsibility absent an allegation of fraud or bad faith on the part of contracting officials, or that a definitive responsibility criterion was not met.
2. Agency properly did not evaluate the cost of changing contractors in determining which bid was low since the IFB did not identify that cost as an evaluation factor.
3. Protest that low bidder is precluded by the Anti-Pinkerton Act from receiving a contract for security guard services is denied, since the statute only restricts the government from contracting with firms that offer quasi-military armed forces for hire, and the protester has not shown that the low bidder is such a concern.

Old Dominion Security (ODS) protests the award of a contract to Lipscomb Security Agency (Lipscomb), the low bidder under invitation for bids (IFB) No DTCG41-84-B-00011 issued by the Coast Guard for security guard services. ODS, the second low bidder, complains that Lipscomb did not meet the invitation's experience requirement; that the cost of changing contractors--from incumbent ODS to Lipscomb--outweighs the difference in the two bids; and that Lipscomb, as a detective or investigative agency, is precluded by the Anti-Pinkerton Act, 5 U.S.C. § 3108 (1982), from being awarded a government contract for security guard services.

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We dismiss the protest in part and deny it in part.

The IFB reserved to the government the right to consider satisfactory performance "within the last two (2) years of services similar in scope and type to those required." ODS asserts that Lipscomb has not had a government contract within the last 2 years and, thus, cannot meet this requirement.

We dismiss this aspect of the protest. The IFB provision in issue involves a bidder's responsibility, that is, the firm's ability to do the job. See Linden-Lorenz Rigging Co., Inc., B-216486, Sept. 28, 1984, 84-2 C.P.D. ¶ 372. Our Office does not review an affirmative determination of responsibility absent an allegation of fraud or bad faith on the part of contracting officials, or that a definitive responsibility criterion in the solicitation was not met. 4 C.F.R. § 21.3(a)(4) (1984).

ODS does not suggest that Coast Guard officials acted fraudulently or in bad faith in finding Lipscomb responsible. Moreover, to the extent ODS believes the experience provision reflects a definitive responsibility factor, we point out that such factors involve specific and objective criteria, compliance with which is a prerequisite to award. See J. Baranello and Sons, 58 Comp. Gen. 509, 513 (1979), 79-1 C.P.D. ¶ 322. The IFB provision here is not stated as imposing a requirement for award, but only a factor the government might consider in judging a prospective contractor's ability to perform. In any event, the provision is not restricted to government contracting experience, and the record indicates that Lipscomb has recent experience in providing guard services to commercial organizations. We thus would have no basis to object to the Coast Guard's finding that Lipscomb has the experience referenced in the IFB provision.

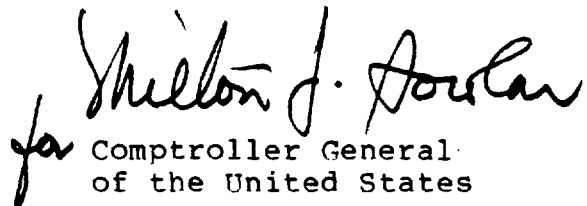
As to the cost of changing contractors from the protester, which bid \$52,560, to Lipscomb, which bid \$52,122, award under the solicitation was simply to be to the low responsive, responsible bidder. Since the IFB thus did not include transition costs as a factor in evaluating bids, it would not have been proper for the Coast Guard to

evaluate Lipscomb's bid on that basis. See J. F. Pitre Cleaning Corp., B-208032, July 27, 1982, 82-2 C.P.D. ¶ 85.

Finally, ODS contends that Lipscomb is prevented from receiving the award by the Anti-Pinkerton Act, which precludes the government from contracting with detective agencies. The act, however, has been interpreted to apply to prospective contracts with firms that offer "quasi-military armed forces" for hire, see James B. Nolan Co., Inc., B-192482, Sept. 26, 1978, 78-2 C.P.D. ¶ 232, and the fact that a firm may provide general investigative or detective services, which ODS suggests applies to Lipscomb, does not thereby qualify it as a provider of such "forces." 57 Comp. Gen. 524 (1978).

The Coast Guard advises that Lipscomb is not the type of firm covered by the act, and Lipscomb, in commenting on ODS's protest, states that all personnel assigned to the project are licensed and employed solely as uniformed security guards. The protester has the burden of proof, A-1 Pure-Ice Co., B-215215, Sept. 25, 1984, 84-2 C.P.D. ¶ 357, and we have no reason under the circumstances to conclude that the Anti-Pinkerton Act poses an obstacle to an award to Lipscomb.

The protest is dismissed in part and denied in part.

  
for Comptroller General  
of the United States