



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** IBI Security Service, Inc.

**File:** B-240495.2

**Date:** February 28, 1991

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.  
Robert E. Deso, Esq., for United International Investigative Services, an interested party.  
Elizabeth M. Jarrell, Esq., Department of Justice, for the agency.  
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Invitation for bid's licensing provision, requiring the contractor to provide post-award evidence that it held a license, but not any specific state or local license, is a contract performance requirement, not a definitive responsibility criterion, which must be considered a prerequisite to award.
2. Contracting officer's affirmative determination that the awardee was responsible was not in bad faith, as alleged by the protester, where there is no evidence to support assertion that the contracting officer was apprised prior to award that the awardee did not have the necessary licenses to perform the contract.

## DECISION

IBI Security Service, Inc. (IBI) protests the Department of Justice, Immigration and Naturalization Service's award of a contract to United International Investigative Services (United) under invitation for bids (IFB) No. DLS-13-B-90 for unarmed guard services at the Port Isabel Service Processing Center, Los Fresnos, Texas. IBI contends that the award is improper because Justice knew before making the award that United would not be able to obtain a Texas license to engage in security guard services as required by the IFB.

We deny the protest.

The IFB contained two provisions regarding licensing. The first provision, paragraph H.14 of the IFB is a standard general requirement that the contractor obtain all necessary licenses.<sup>1/</sup> The second provision, Section H of the work statement, reads:

"The successful contractor shall be licensed as a qualified guarding service company. A notarized copy of this license must be provided within seven (7) days after award. The Contractor is responsible for obtaining all additional necessary permits and licenses required by the State of Texas. Copies of these documents, as well as documentation indicating licensing from another state, shall be forwarded to the Contracting Officer as soon as obtained."  
(Emphasis in original.)

Our cases distinguish between general solicitation requirements that direct government contractors to comply with all applicable state and local licensing requirements and more specific solicitation requirements that bidders under the solicitation have a particular state or local license. When the solicitation imposes a specific licensing requirement as a condition of award, the general rule is that compliance with the requirement, or at least the ability to comply by the start of contract performance, must be shown as a prerequisite to award, since the requirements are considered definitive responsibility criteria.<sup>2/</sup> VIP Limousine Service, Inc., B-225639, Jan. 29, 1987, 87-1 CPD ¶ 98. However, this rule does not apply if the license requirements in question do not require the bidder or offeror to possess, or show the ability to obtain, a specific license before award. See Cumberland Sound Pilots Ass'n--Recon., B-229642.2, June 14, 1988, 88-1 CPD ¶ 567. In such circumstances, licensing requirements are no more than contract performance requirements. See Telos Field Eng'g, 68 Comp. Gen. 295 (1989), 89-1 CPD ¶ 238. Where

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1/ "The Contractor shall obtain at his own expense all necessary local, city, county and state licenses, permits, and shall conform to all laws, regulations and ordinances and code requirements applicable to performance of this Contract. Full responsibility for compliance with this clause shall rest with the Contractor and the Government shall assume no liability for failure thereof."

2/ Definitive responsibility criteria are objective standards, established by a contracting agency to measure a bidder's or an offeror's ability to perform the contract, as stated in certain specific qualitative and quantitative qualification requirements contained in a solicitation. W.H. Smith Hardware Co., B-228576, Feb 4, 1988, 88-1 CPD ¶ 110.

the solicitation only contains a general licensing requirement, a contracting officer is not expected to determine just what the non-federal requirements may be and therefore is not charged with considering those requirements in awarding a contract, although a contracting officer, who is aware of local licensing requirements and has reason to believe a bidder's failure to obtain a required license may result in an inability to perform, should consider the matter in determining the bidder's responsibility. See What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD ¶ 179; VIP Limousine Service, Inc., B-225639, supra.

The IFB provisions impose no requirement that must be satisfied prior to award. Paragraph H.14 contains no specific licensing requirements. Section H of the work statement requires only a post-award showing that the contractor has been licensed as a qualified guarding service company.<sup>3/</sup> These provisions impose contract performance requirements, not definitive responsibility criteria that must be considered as a prerequisite to award.<sup>4/</sup>

Justice affirmatively determined that United was responsible before it made award. We do not review such affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith, or that a definitive responsibility criterion was not met. 4 C.F.R. § 21.3(m) (5) (1990). To show bad faith, a protester must submit convincing proof that the contracting officer acted with the specific and malicious intent to hurt the protester. WBM Maintenance, Inc., B-238049, Apr. 20, 1990, 90-1 CPD ¶ 405. We will not attribute unfair or prejudicial motives to a contracting activity on the basis of unsupported allegations, inference, or supposition. See System-Analytics Group, B-233051, Jan. 23, 1989, 89-1 CPD ¶ 57.

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<sup>3/</sup> Conceivably, United could make the required post-award showing by providing a guard service license from another state. United's president advises that United is licensed in about twenty states as a guard company.


<sup>4/</sup> The agency reports that it viewed pre-bid/pre-award licensing costs as a barrier to competition, and intentionally continued its practice under previous solicitations of making the licensing provisions a performance requirement.

IBI alleges that on August 7, 1990, the Contracting Officer was told by the Texas Board of Private Investigators and Private Security Agencies Board (Board) that it was conducting an investigation of United for offering services without first obtaining necessary State licenses, and that on August 8, 1990, notwithstanding its knowledge of the investigation, the contracting officer, in bad faith, awarded the contract to United.

Justice reports that it awarded the contract to United early on the morning of August 7, 1990, and not on August 8 as the protester claims. Later on August 7, Justice received a call from the Board advising that United did not have a Texas license, and that the Board thought it improper for a contractor to bid without first obtaining a Texas license.

IBI did not respond to an invitation to provide further evidence that the contracting officer was aware, prior to award, that United would not be licensed by the state of Texas. Instead, IBI urges that the contracting officer should be charged with constructive knowledge of the alleged Texas requirement that a guard service license will not be granted to a firm which bids without that license. Since Section H is only a general licensing requirement, the contracting officer was not under an obligation to determine, prior to award, the applicability of specific Texas licensing requirements to the intended awardee.<sup>5/</sup> See VIP Limousine Service, Inc., B-225639, supra.

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>5/</sup> As stated above, this was the contractor's responsibility under the contract. Compliance with applicable state and local licensing requirements is generally a matter to be settled between state or local authorities and contractors-- not federal officials. Lewis & Michael, Inc., B-215134, May 23, 1984, 84-1 CPD ¶ 565.