



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Will Bendix Electric, Inc.

File: B-259002

Date: February 24, 1995

DECISION

Will Bendix Electric, Inc. protests the award of a contract to Fire Electric, Inc. under invitation for bids (IFB) No. 664-85-94, issued by the Department of Veterans Affairs (VA) for a public address speaker system upgrade. Bendix alleges that Fire Electric was ineligible for award because its state license was suspended at the time of bid opening and it was not licensed to perform asbestos work.

We dismiss the protest.

The IFB was issued on August 15, 1994, and contemplated a contract to provide all labor, equipment, and materials to accomplish an upgrade of a public address system at the VA Medical Center in San Diego, California. The IFB included the standard clause set forth at Federal Acquisition Regulation § 52.236-7, which states that the "contractor" is responsible for obtaining any necessary licenses and permits and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the work called for in the IFB.

Two bids were opened on September 14. Fire Electric submitted the low bid at \$97,200. The protester followed with a price of \$187,596.

Bendix protested to the agency on September 14 against a possible award to Fire Electric. The contracting officer conducted a pre-award survey, investigated Fire Electric's responsibility, and made an affirmative determination that it was responsible. The agency denied Bendix's agency-level protest on September 28, and made award to Fire Electric on September 30. This protest to our Office followed.

Bendix argues that Fire Electric was ineligible for award because its state contractor license was suspended at the time of bid opening and it does not possess the necessary credentials to perform asbestos-related work, which will need to be performed under the contract.

In response, the agency has furnished evidence, whose authenticity and accuracy are not challenged by the protester, that the awardee's state license was not suspended at the time of bid opening or award, and that its subcontractor possesses the special license required for asbestos-related work. Therefore, it appears that there is no factual basis for this protest. In addition, as stated below, this protest does not state a valid basis of protest for consideration by our Office.

Where a solicitation contains a general licensing requirement--i.e., a requirement that the contractor have all applicable licenses--without requiring specific licenses, the contracting officer properly may make the award without regard to whether the bidder possesses the licenses at the time of bid opening or award. Central Virginia Ambulance Serv., Inc., B-225530, Dec. 5, 1986, 86-2 CPD ¶ 651. Contracting officers may consider the lack of a state or local license where they determine that enforcement attempts by the state or local authority are a reasonable possibility and such enforcement attempts could interrupt and delay contract performance. Mid-America Management Servs., Inc., B-244103, June 5, 1991, 91-1 CPD ¶ 537. In such cases, the licensing issue is considered as part of the contracting officer's determination of the bidder's responsibility. Id. An agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1994). Here, since Bendix has not alleged, and there is no evidence in the record of fraud, or bad faith, and because a general license compliance provision is not a definitive responsibility criterion, see Honolulu Marine, Inc., B-248380, Aug. 6, 1992, 92-2 CPD ¶ 87, the protest does not state a valid basis of protest for consideration by our Office.

The protest is dismissed.



Paul E. Jordan
Acting Assistant General Counsel