

DECISION



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

11554. Transp
Mr. Golden

FILE: B-195934

DATE: September 28, 1979

MATTER OF: Champlain Security Systems, Inc.

[Protest Alleging That Awardee's Bid Was Nonresponsive]
DIGEST:

DL 58921

Solicitation requirement that bidders possess specific state private guard license is matter of responsibility, not responsiveness, and upon finding that small business bidder was lacking such license, contracting officer properly delayed award of contract pending outcome of Small Business Administration certificate of competency proceeding.

AGC 00002

DL 6-02919

Champlain Security Systems, Inc. (Champlain) protests the award of a contract to MSM Security under General Services Administration (GSA) solicitation LPS-79-SMA, a 100% small business set-aside for armed guard service at the GSA Depot, New Bedford, Massachusetts. The contract was awarded to MSM Security, the low bidder, after the Small Business Administration (SBA) issued a Certificate of Competency (COC). Champlain, the second low bidder, states that MSM Security did not possess a Massachusetts private guard license as of August 1, 1979, the date work was to have commenced. Champlain therefore asserts that MSM Security was not responsible and that its bid was nonresponsive. Champlain argues that the issuance of a COC on August 27 to MSM Security on the basis that the company would have a guard license on September 1, 1979, had the effect of granting a delay in the contract award which allowed MSM Security time to obtain the license to the disadvantage of the other bidders who qualified on August 1.

The solicitation required that a copy of the Massachusetts license be furnished with the bid and contained the warning that failure to include the license might result in the rejection of the bid as nonresponsive. The solicitation also provided that in performing the work specified that the contractor was responsible for obtaining necessary licenses.

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This case is one in which it is clear from the protester's initial submission that the protest is without legal merit, and we will decide the matter on the basis of this submission without requesting an agency report. Industrial Maintenance Services, Inc., B-195216, June 29, 1979, 79-1 CPD 476.

Where, as here, the contracting officer is aware of a specific state licensing requirement, he may reasonably include it in the solicitation in order to assure that the potential awardee is legally able to perform. James B. Nolan Company, Inc., B-192482, September 26, 1978, 78-2 CPD 232; 53 Comp. Gen. 51, 53 (1973). However, contrary to the statement in the solicitation concerning nonresponsiveness, the possession of such a license is a matter of bidder responsibility rather than responsiveness. Minority Trucking-Transportation Development Corporation, B-191231, August 15, 1978, 78-2 CPD 118; see also Halifax Engineering, Incorporated, B-190405, March 7, 1978, 78-1 CPD 178.

The SBA is empowered to certify to Government procurement officers with respect to all elements of responsibility under its COC program and a Government procurement officer must refer a matter of responsibility of an otherwise qualified low bidder to the SBA for a final disposition. 15 U.S.C. § 637(b) (7) (1976), as amended by Act of August 4, 1977, Pub. L. No. 95-89, 91 Stat. 553; Minority Trucking, supra; Bartholomew and Company, B-188454, October 11, 1977, 77-2 CPD 281.


In this case, upon discovering that MSM Security's bid did not contain proof of possession of a guard license, the contracting officer referred the matter to the SBA and delayed award of the contract. Champlain, the incumbent contractor, agreed to extend its contract for 1 month pending the outcome of the certification procedure. These actions were in accordance with applicable regulations. Federal Procurement Regulations (FPR) § 1-1.708-2 (1978). Thus award to the protester without delay as requested by the protester would have been contrary to the FPR concerning

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certification by SBA of small businesses as to matters of responsibility. See Schottel of America, Inc., B-195001, July 6, 1979, 79-2 CPD 13.

The protest is summarily denied.

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Deputy Comptroller General
of the United States