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DECISION

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

FILE: B-204251

DATE: November 4, 1981

MATTER OF: International Business Investments, Inc.

DIGEST:

1. Failure of bidder to furnish a training plan with bid does not make bid non-responsive. Since specifications stated in detail the number of hours and subject areas of training, requirement for training plan was informational in nature, bearing on responsibility of bidder, and could properly be submitted after bid opening.
2. Allegations--that bidder failed to furnish training plan with bid, that bidder is not licensed by State agency (and IFB contained general statement that contractor should obtain all necessary State and local permits and licenses), and that bid price is so low that adequate performance under contract is not possible--all relate to bidder's responsibility. Protest concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.
3. Protest on basis that bidder does not possess "secret" clearance as required by IFB is denied, since bidder has clearance and there is no requirement for clearance in solicitation.
4. Where the initial protest is made in expectation that contracting agency might take action adverse to protester's interest, but protester waits until agency report is furnished to

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seek out information which was available before the original protest was filed, the subsequent protest on the new basis is untimely notwithstanding it was made within 10 working days after receipt of the contracting agency's report.

International Business Investments, Inc. (IBI), protests against the award of a contract for guard services to Hyde's Security Services, Inc. (HSS), by the General Services Administration (GSA) under invitation for bids No. GS-07B-21034/7XB.

IBI initially contended that HSS's bid should be rejected as nonresponsive because: (1) the bid did not contain a training plan; (2) HSS is not licensed as a training school by the State of Texas Board of Private Investigators; (3) HSS does not have a "secret" clearance; and (4) the bid price is so low that HSS will not be able to perform adequately under the contract. IBI raised additional grounds for protest concerning alleged irregularities in HSS's bid package (bid, bid bond, power of attorney) in its September 17, 1981, comments on the GSA report on IBI's initial protest.

The protest is without merit in part and untimely in part.

Bids were opened on July 28, 1981, and HSS submitted a training plan to GSA on August 10, 1981. This plan was considered by GSA and determined to be acceptable. Although the invitation for bids requested a statement regarding the bidder's training plan, the invitation's specifications stated in detail the number of hours and subject areas of training required for personnel under the contract. Therefore, the requirement for a training plan was informational in nature, bearing on the responsibility of the bidder, and would not affect the obligation of the bidder to perform in accordance with the specifications if awarded the contract. Accordingly, failure to provide the training plan by bid opening was not cause for the bid to be rejected as nonresponsive and the plan could be submitted and properly considered for responsibility purposes after bid opening. See Career Consultants, Inc., B-198727, October 16, 1980, 80-2 CPD 285.

Concerning licensing, the invitation for bids stated:

"In performance of work in the specification, the Contractor shall be responsible for obtaining all necessary permits and licenses, and for complying with all applicable Federal, state, and municipal laws."

Where, as here, a solicitation contains a general requirement that the contractor have all necessary licenses and permits to perform the contract, but does not indicate a specific State or local license which is required, we have held that a contracting officer should not have to determine what the State or local requirements may be, and the responsibility for making such a determination is correctly placed with the prospective contractor. The failure of a bidder to hold a State or local license in this situation does not mean that the bid can be rejected as nonresponsive, but is merely a factor to be taken into account by the contracting officer when determining the responsibility of the bidder. See What-Mac Contractors, Inc., 58 Comp. Gen. 767 (1979), 79-2 CPD 179.

Regarding the allegation that HSS's bid price is so low that satisfactory performance will not be possible, GSA notified HSS that its bid was below the Government estimate and that the bid might be erroneous; however, HSS verified the bid price as accurate. Therefore, the bid was accepted by GSA.

We have held that the submission of a bid that a competitor considers too low does not constitute a legal basis for precluding a contract award. The rejection of a bid as unrealistically low requires a determination that the bidder cannot perform at that price and is, therefore, nonresponsible. Aul Instruments, Inc., B-199416.2, January 19, 1981, 81-1 CPD 31.

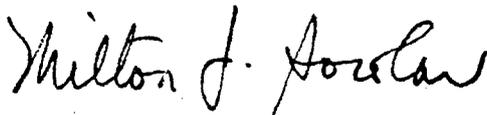
From the above discussion, it is evident that the first, second, and fourth protest bases are all related to GSA's determination that HSS was a responsible bidder capable of performing the contract.

Our Office does not review protests of affirmative determinations of responsibility, which is largely a business judgment, unless there is a showing of possible fraud on the part of the procuring officials or the solicitation contains definitive responsibility criteria which have not been applied. On the record here, we cannot conclude that the responsibility determination was the result of fraud or that definitive criteria have not been applied. Therefore, these issues are not for review by our Office and are dismissed. Mars Signal Light Company, B-204994, October 21, 1981, 81-2 CPD _____; Aul Instruments, Inc., supra.

Regarding the charge that HSS does not possess a "secret" clearance as required by the solicitation, GSA states that HSS does possess a "secret" clearance issued by the Defense Investigative Clearance Office. Moreover, there is no requirement for a "secret" clearance in the invitation's specifications. Therefore, this portion of the protest is denied.

Finally, in response to GSA's September 9, 1981, report on the initial bases of protest, IBI raised several new grounds for protest. These issues concern alleged irregularities in HSS's bid documents and were first filed in our Office on September 22, although the original protest made with the expectation that GSA might make an award to HSS had been filed August 3, 1981. Where the initial protest is made in expectation that the contracting agency might take action adverse to the protester's interest, but the protester waits until the agency report is furnished to seek out information which was available before the original protest was filed, the subsequent protest on the new basis is untimely notwithstanding it was made within 10 working days after receipt of the contracting agency's report. Sun Electric Corporation, B-202325, August 10, 1981, 81-2 CPD 112.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States