

DECISION



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

FILE: B-221839

DATE: April 9, 1986

MATTER OF: United Pacific Corporation

DIGEST:

Where a solicitation provision requires that all work under the contract to be performed by a contractor licensed by the state, but does not require a license prior to contract award, the lack of a license at time of award is not a bar to the award.

United Pacific Corporation protests a contract award for tree trimming at Camp Pendleton, California to Cedar Canyon Tree Service by the Department of the Navy under invitation for bids (IFB) No. N62474-84-B-9373. United Pacific contends that Cedar Canyon's bid was nonresponsive because Cedar Canyon was not licensed by the state of California to perform the required work and thus did not comply with the IFB's licensing requirement.

We deny the protest.

The first and second low bids were eliminated after bid opening because one was nonresponsive and the other was withdrawn. This left Cedar Canyon as the low bidder and United Pacific as the second low bidder. Award was made to Cedar Canyon on January 13, 1986 and United Pacific protested to our Office on January 27.

The central issue in this protest is the proper interpretation of the following IFB provision:

"e. Contractor Licensing and Competency Requirement. All work performed under this contract shall be accomplished only by a contractor licensed by the State of California. The Contractor shall produce evidence that he holds current State Licensing."

At the time of bid opening, United Pacific had a C-27 license for landscaping issued by California's Contractors State License Board. Cedar Canyon was operating under an exemption from the licensing requirement. After contract award, however, according to the license board, Cedar Canyon was granted a C-61 license for tree trimming.

United Pacific states that it was told by the Contractors State License Board that either a C-27 or C-61 license would permit the contractor to perform the tree trimming called for by this procurement. Because Cedar Canyon had neither license, United Pacific argues that its bid was nonresponsive and should have been rejected. United Pacific further argues that any exemption from the licensing requirement Cedar Canyon might have had is irrelevant here, because the IFB required that the contractor possess a specific state license.

United Pacific cites Martin Electric Co., B-213136, Nov. 18, 1983, 83-2 CPD ¶ 592, as support for its position. In that case, we held that in the absence of a solicitation provision requiring a bidder to possess a specific license, a bidder's lack of a state license does not bar award to that bidder. This, United argues, implicitly supports its contention that where a solicitation requires a bidder to have a specific license, an award to an unlicensed bidder should be set aside.

The general rule is that an IFB provision that requires a bidder to possess a specific license is a definitive responsibility criterion, compliance with which is a necessary prerequisite to contract award. See S.A.F.E. Export Corp., B-213027, June 27, 1984, 84-1 CPD ¶ 675. For example, a requirement that the contractor be licensed as a qualified guarding service company and supply a notarized copy of its license prior to contract award is such a criterion. New Texas Corp., B-216813, Nov. 6, 1984, 84-2 CPD ¶ 509. Where, however, the solicitation contains only a general licensing requirement, the contracting officer is free to make award without regard to whether the bidder is licensed under local law. Cadillac Ambulance Service, Inc., B-220857, Nov. 1, 1985, 85-2 CPD ¶ 509. Thus, where a solicitation required that the contractor obtain all necessary licenses and permits for the state of Texas, we found the requirement to be a general one and not a matter the contracting officer needed to consider in making the contract award. New Texas Corp., B-216813, supra, 84-2 CPD ¶ 509.

In our view, contrary to the protester's position, the IFB licensing provision here is a general licensing requirement only. It does not require any license as a prerequisite to contract award. By its specific terms, the provision requires only that the firm obtaining the contract have a state license before performing the work and only that the contractor then produce evidence that it holds a current state license. Moreover, the provision merely identifies the license that the contractor must have as a California license; no specific license is identified. The record indicates that there are at least two licenses that may be appropriate--a C-27 landscaping license and a C-61 tree trimming license. Therefore, the license provision is a general requirement and compliance is a matter to be resolved by the contractor and the state authorities. See Mid-South Ambulance Corp., B-214078, Jan. 30, 1984, 84-1 CPD ¶ 133.

Since the licensing provision here does not require a specific license, the awardee's lack of a license at the time of contract award does not provide a legal basis to object to the award. Metropolitan Ambulance Service, Inc., B-213943, Jan. 9, 1984, 84-1 CPD ¶ 61. Accordingly, the protest is denied.

for 
Harry R. Van Cleve
General Counsel