

Protest of )  
 ) Date: July 21, 1989  
JAGCO DEVELOPMENT AND )  
CONSTRUCTION, INC. )  
 )  
Solicitation No. 059984-88-A-0069 ) P.S. Protest No. 89-30

### DECISION

Jagco Development and Construction, Inc. (Jagco), timely protests the contracting officer's decision to award a contract to Keller Construction Company (Keller) under Solicitation No. 059984-88-A-0069, contending that Keller was ineligible for award for failing to comply with Nevada's state licensing requirements for building contractors.

Solicitation No. 059984-88-A-0069, issued November 14, 1988, by the San Bruno Facilities Service Center (FSC), Western Region, sought proposals for construction of a new post office in Laughlin, NV. This was the second step in a solicitation process under the prequalification procedure authorized by Procurement Manual (PM) 3.1.6.c and 11.5.4. Proposals were to be submitted by firms previously prequalified (including Jagco and Keller) by December 9. Keller's offer, in the amount of \$1,531,000, to build the new Laughlin Main Post Office was accepted by the Postal Service, and the contracting officer awarded the contract to Keller on March 1, 1989, following Keller's submission of the requisite payment and performance bonds. PM 11.5.1.o. Offerors that submitted proposals were advised by letter of the award on the date award was made to Keller. There is no evidence in the record when Jagco received notice of the award.

On March 15, the San Bruno FSC received four protest letters from Jagco. On March 18, the contracting officer's representative referred the protest to the Phoenix Facilities Service Office (FSO), since the FSO had been assigned responsibility for contract administration of the Laughlin project. A contracting officer's proposed decision to deny the protest as obviously without merit pursuant to PM 4.5.6.b was prepared but not issued within ten working days of receipt of the protest. Although, according to the contracting officer's report, the decision was intended for review and concurrence by the Postal Service's Office of Field Legal Services, Western Region, it was inadvertently mailed to this office. The Phoenix FSO was advised that since the time in which the contracting officer could issue a decision under PM 4.5.6.b had run, the protest would have to be resolved by this office. On May 8, we received the protest in accordance with PM 4.5.7.

In its protest, Jagco alleges that Keller is licensed by Nevada's State Contractors Board (Board), only to perform construction projects of \$500,000 or less and that Keller was "limited by law from bidding or contracting over their license limit." As a result, the protester contends that Keller failed to meet the solicitation requirement that the contractor comply with all federal, state and local laws.<sup>1/</sup> The protester further asserts that, since Keller lacks an adequate state license, Keller's prequalification statement must have included false information pertaining to its status as a licensed state contractor and Keller should not have been found qualified in the pre-qualification process.

In his report to this office, the contracting officer disputes that Keller's license restricts performance to projects not exceeding \$500,000, enclosing a copy of Keller's license indicating that Keller is permitted to perform unlimited construction for "Residential & Small Commercial" projects. Responding further, the contracting officer asserts that state and local governments regulations are not controlling over contracts between the United States and contractors.

We need not resolve the question whether the Laughlin post office project is within the scope of Keller's contracting license<sup>1/</sup> because Jagco's premise that the solicitation requires the possession of a state license is incorrect. The Postal Service follows the same rule applicable to the rest of the federal Government with regard to contractor compliance with state licensing requirements. The rule was summarized in a recent decision of the Comptroller General:

Contracting officers may, by appropriate solicitation language, require bidders to comply with specific state and local licensing requirements, and in such cases compliance with such requirements is a prerequisite to award. However, where a solicitation merely contains a more general requirement that the contractor comply with state and local licensing requirements, a contracting officer is not expected to inquire into what such licensing requirements may be or whether a bidder will comply; instead, the matter is one to be resolved between the contractor and the licensing authorities.

James C. Bateman Petroleum Services, Inc., dba Semco, Comp. Gen. Dec. B-232325, August 22, 1988, 88-2 CPD & 170 (citations omitted). The decision goes on to note that a provision similar to the one cited by Jagco here was a general requirement, not a specific one, so that under the enunciated rule "the contracting officer was free to make

<sup>1/</sup>Jagco refers to Special Clause G.9, "Permits and Responsibilities", which provides, in pertinent part: "The contractor is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations in connection with the prosecution of the work."

<sup>2/</sup>The Comptroller General has determined as a general rule that contracting officers are "not competent to pass upon the question of whether a particular state license is legally required for the performance of federal work." Olson and Associates Engineering, Inc., Comp. Gen. Dec. B-215742, July 30, 1984, 84-2 CPD & 129; Cadillac Ambulance Service Inc., Comp. Gen. Dec. B-220857, November 1, 1985, 85-2 CPD & 509.

award ... without regard to whether the awardee [was] licensed or certified by [the state]." See, e.g., Honeywell, Inc., P.S. Protest No. 76-41, August 27, 1976; Industrial Waste Disposal Co., Inc., P.S. Protest No. 75-17, April 21, 1975.

The protest is denied.

William J. Jones  
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**[checked against original JLS 5/21/93]**