



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Camden Shipping Corporation

File: B-402743.2

Date: November 5, 2010

Pamela J. Mazza, Esq., Isaias Alba IV, Esq., Paralee White, Esq., and Patrick T. Rothwell, Esq., PilieroMazza PLLC, for the protester.

Janis P. Rodriguez, Esq., and Ryan M. Kabacinski, Esq., Department of Transportation, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation for ship manager services contained mandatory eligibility requirement that offerors must be operators or owner/operators of a vessel of a certain size and weight, agency's decision to eliminate the protester's proposal from consideration was reasonable where protester certified that it was not an operator or owner/operator of an appropriate vessel.

DECISION

Camden Shipping Corporation, of Bordentown, New Jersey, protests the rejection of its proposal under request for proposals (RFP) No. DTMA8R09011, issued by the Department of Transportation (DOT), Maritime Administration, for ship manager services for 10 ships. The protester argues that the agency improperly rejected its proposal for failing to comply with a mandatory eligibility requirement.

We deny the protest.

BACKGROUND

The RFP, issued on March 12, 2010, contemplated the award of multi-year, fixed-price service contract with cost reimbursable items. As stated in the RFP, the selected contractor will be responsible for the maintenance and operation of 10 very

large government-owned vessels in the “Ready Reserve Force.”¹ RFP §§ C.1.2, C.1.3. These vessels are to be maintained in a readiness status for national defense and national emergency purposes, like hurricanes and earthquakes. *Id.* As is relevant here, “Ship Group 26,” for which the solicited services were set aside for small business concerns, is comprised of two fast sealift ships; according to the agency, these ships are the fastest and some of the largest ships in the Ready Reserve Force. Agency Legal Memorandum at 2. Fast sealift ships require a high level of sophistication to operate due to the size and speed of the vessels. *Id.*; Contracting Officer’s Statement ¶ 12.

The RFP required that “offerors must meet” the mandatory eligibility requirements of possessing United States citizenship, being a vessel operator or owner/operator, and having a \$350,000 per vessel irrevocable line of credit. RFP § M.3.1. The RFP stated that the failure to demonstrate compliance with any of the mandatory requirements by the proposal due date would result in the elimination of that proposal from further consideration for award. RFP §§ M.2.2.2, M.3.1.

At issue in this protest is the mandatory eligibility requirement that required offerors to have operated or owned and operated, a very large vessel within the past 5 years. RFP § M.3.1.2. Specifically, the RFP required that:

Offerors must be operators or owner/operators within the past five (5) years of a least one (1) self-propelled vessels, or integrated Tug/Barge, of at least 450 [feet length along the water line], with a minimum cargo capacity of 7,500 [dead weight tons] or a Tanker of at least 25,000 [dead weight tons].

RFP § L.7.2.2; see also RFP § M.3.1.2. To demonstrate compliance with the vessel operator or owner/operator mandatory eligibility requirement, the RFP required offerors to complete the following “K.19” certification by June 7, 2010, as follows:

K.19 VESSEL OWNER/OPERATOR

1. The offeror hereby certifies that as of ____2010:

(a) it is is not a current operator, or owner/operator, or that:

(b) it will be a current operator, or owner/operator . . . in the operation [of] commercial type vessels, or public vessels owned by the U.S. Government, of vessels at least 450 feet in length along the

¹ The Ready Reserve Force is the high readiness subset of DOT. RFP § C.1.

waterline . . . , or with a minimum capacity of at least 7,500 dead weight tons . . . , or for tankers, of [at] least 25,000 dead weight tons²

* * * * *

3. To be considered eligible for contract award, offerors must be operators or owner/operators of vessels, as specified above

RFP § K.19; see RFP § M.3.1.2.

For those proposals that met the minimum mandatory requirements, the RFP provided that the proposals would be evaluated against the evaluation factors of technical/management, past performance, and price. RFP §§ M.2.2.3, M.2.2.4, M. 2.2.5. With regard to the past performance evaluation factor, the RFP stated that the agency would assess the relevancy of each offeror’s present and past performance during the past 4 years, including the past performance of the offeror’s joint ventures, subcontractors, and teaming partners. RFP § M.5.1.2. The RFP required, however, that the contractor awarded the contract perform the “core services” required under the contract. RFP § H.11; amend. 4, Question 52.

The core services were identified as contracting and procurement, technical and operations management, Ready Reserve Force functions, and reduced operating and full operating crew. RFP § H.11. The agency states that performance of these requirements by the offeror itself reflected the agency’s need to ensure that the offeror has the resources to perform the required services and is capable of performing the contract in the event of a mass activation. Id.

Camden submitted a proposal in response to the RFP for Ship Group 26, the group set aside for award to a small business concern. Camden submitted with its proposal a vessel owner/operator certification in accordance with section K.19 of the RFP, which indicated that Camden was not a current operator or owner/operator of a vessel of the requisite size and, instead, stated that Camden was relying on a certification for its teaming partner and principle subcontractor, [DELETED], for compliance with this requirement.³ Agency Report (AR), Tab 2-B, Camden’s Proposal, at 1.

² In addition, the RFP required the offeror to provide the name, size, and registry of the vessel to determine if the offeror met this requirement. RFP §§ M.3.1.2, K.19

³ [DELETED] is a large business that is currently operating government-owned vessels [DELETED]. Contracting Officer’s Statement ¶ 18.

The mandatory eligibility requirements were evaluated by the mandatory elements requirement team. AR, Tab 3-B, Mandatory Eligibility Interim Report. The team determined that Camden did not meet the mandatory eligibility requirement of being a vessel operator or owner/operator.⁴ This determination was based on Camden's certification that it did not meet the eligibility requirement. *Id.* at 5. The team concluded that Camden could not rely on [DELETED] vessel owner/operator status to fulfill the requirement because the RFP required that the offeror be an operator or owner/operator. *Id.* The team recommended that Camden's proposal be eliminated from further consideration, and the contracting officer agreed with this recommendation. *Id.*; Contracting Officer's Statement ¶ 22.

By letter dated July 23, 2010, Camden was advised that its proposal would be eliminated from further consideration because Camden failed to satisfy the RFP's vessel operator or owner/operator mandatory eligibility requirement. AR, Tab 2-A, Letter from DOT to Camden, July 23, 2010, at 1-4. On August 2, Camden filed this protest with our Office.

DISCUSSION

The protester argues that it was improper for the agency to reject its proposal simply because it relied on the experience of its subcontractor to satisfy the vessel owner/operator requirement. The protester maintains that the RFP did not require that prime contractors be the vessel operator or owner/operator, and that its subcontractor's experience should be considered in evaluating eligibility because the RFP permits consideration of the experience of subcontractors and teaming partners in evaluating past performance. Protest at 9; Comments at 5-9.

The agency maintains that the term "offeror" in both the section K.19 certification and in sections L and M of the RFP clearly require the company submitting the offer, Camden in this instance, to have operated large government-owned or commercial vessels of the required size within the last 5 years.⁵ Agency Legal Memorandum at 5. The agency further argues that the consideration of a subcontractor's or teaming partner's experience in the past performance evaluation does not negate the requirement that the offeror meet the mandatory eligibility requirement, since an

⁴ The team also concluded that Camden did not have the required [DELETED] and, therefore, the firm did not meet another mandatory eligibility requirement.

⁵ The agency reports that Camden is a relatively new company and itself does not have vessel operating experience. Camden's technical proposal states that it's a licensed "NVOCC." AR, Tab 2-C, Camden's Proposal, at 6. According to the agency, an NVOCC is a "Non-Vessel Operating Common Carrier," which does not operate vessels of any size including the very large, commercial-type vessels in the Ready Reserve Force. Agency Legal Memorandum at 6.

offeror must satisfy the mandatory eligibility requirements before its proposal will be considered for evaluation under any of the other evaluation factors. In any event, the agency contends, [DELETED] experience is not relevant to the owner/operator issue because [DELETED] cannot, under section H.11 the RFP, perform the core requirement of operating the vessel, and [DELETED] will not be acting as the ship manager. Agency Legal Memorandum at 12-13.

Where a protester challenges an agency's evaluation resulting in the rejection of its proposal as unacceptable, our review is limited to considering whether the evaluation is reasonable and consistent with the terms of the RFP and applicable procurement statutes and regulations. National Shower Express, Inc.; Rickaby Fire Support, B-293970; B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. CAE USA, Inc., B-293002; B-293002.2, Jan. 12, 2004, 2004 CPD ¶ 25 at 6.

Based on our review of the record, we note that the RFP in several places warned vendors that in order to be eligible for award, the offeror had to meet mandatory eligibility requirements and had to submit adequate documentation to demonstrate compliance with the requirements. RFP §§ L.7.1, M.3.1. To satisfy the requirement that the offeror be an operator or owner/operator of the appropriate size vessel, the RFP specifically required that an offeror certify that it had the appropriate experience as either an operator or owner/operator of a specific type of vessel. RFP § K.19. This certification made no mention of accepting, in lieu of the offeror's certification, a certification of a subcontractor or teaming partner. RFP § K.19. Indeed, the representations and certifications set forth in section K of the RFP are signed by the offeror, which is the entity submitting the proposal, not its subcontractors or team members.⁶ That the certification was required by the offeror, and not its subcontractors and team members, is also consistent with section H.11 of the RFP, which required that the core services be performed by the offeror and not its subcontractors or team members. Based on the language of this RFP, we find that the agency's refusal to accept the certification of [DELETED] was reasonable.

We also reject the protester's argument that the experience of teaming partners and subcontractors could be used to satisfy the mandatory eligibility requirements here because such experience could be considered under the past performance

⁶ We further note that the certification Camden submitted concerning [DELETED] was not submitted or signed by [DELETED], nor did the protester provide any documentation demonstrating that [DELETED] had given it permission to submit a certification on its behalf. AR, Tab 1-B, Camden's Proposal, § K.19. These facts further support the reasonableness of the agency's decision to not consider Camden's certification of [DELETED].

evaluation. As explained above, offerors were warned that the mandatory eligibility requirements were separate and distinct from the evaluation factors, and that offerors who did not meet those requirements would not be further evaluated.⁷ RFP § M.2.2.2.

Given the clear language of the RFP concerning minimum eligibility requirements, and because it is clear from the record that Camden certified that it was not an operator or owner/operator of the specified vessel, the contracting officer reasonably concluded that it did not satisfy a mandatory eligibility requirement and reasonably eliminated the Camden proposal from further consideration.⁸

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁷ The protester also argues that the mandatory eligibility requirement is a definitive responsibility criterion, and that subcontractor and team member experience may generally be used to satisfy definitive responsibility criteria, except where the solicitation provides that only the prime contractor's experience will be considered. Protest at 7; Comments at 6-7. As discussed above, the RFP here required the offeror's certification of operator or owner/operator status and not that of its team members or subcontractors.

⁸ In light of our conclusion that the agency reasonably rejected Camden's proposal because of Camden's failure to satisfy a mandatory eligibility requirement, we need not discuss the agency's additional bases for rejecting Camden's proposal.