

Pogony

18980

DECISION



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

FILE: B-202244

DATE: July 30, 1981

MATTER OF: Allen M. Campbell Company

DIGEST:

Agency did not act unreasonably by treating license requirement in negotiated procurement as element of responsibility which need not be complied with until commencement of performance rather than as matter relating to technical acceptability because requirement: (1) was merely part of general specifications concerning performance; 2) was not specifically mentioned in evaluation criteria or negotiations; and 3) is type which traditionally has been allowed to be satisfied after award.

Allen M. Campbell Company protests the award of a contract to Pan Am World Services, Inc. by the Sacramento Army Depot, California (SAAD). We find Campbell's protest to be without merit.

The request for proposals solicited offers for a cost-type services contract to staff, operate and perform commercial industrial type activities at SAAD. The solicitation advised offerors that award would be made to the low offeror submitting a technically acceptable and cost realistic proposal. The following major areas of work were listed in the solicitation's instructions for proposal preparation:

[Protest of Awardee Responsibility Determination]

115962

~~214440~~

- "a. Project Management
- b. Depot Property Activity
- c. Equipment Management Activity
- d. Facilities Engineering Activity
- e. Mail Room Activity
- f. Library
- g. Family Housing Operations
- h. Security Operations"

(Emphasis Added.)

The request for proposals also contained detailed evaluation criteria for technical factors and cost realism. Paragraph D-22, which set forth the significant evaluation factors, provided as follows:

" * * * All proposals submitted will be evaluated on the basis of the below listed evaluation factors. * * * Proposals must conform to all terms and conditions contained in this request for proposals. Proposals which do not conform to all requirements expressed in this request for proposals may be rejected without further evaluation or discussion.

* * * * *

(a) Technical Factors

(1) General Management:

- (a) Labor Relations and Training
- (b) Quality Assurance
- (c) Security

* * * * *

Paragraph 3.2.1 of Attachment No. 7 to the technical specifications required that the "contractor shall be licensed in the State of California and shall comply with all state and local laws regarding Security Guards." Campbell understood this requirement as setting forth a "definitive requirement" in addition to the usual requirement for providing evidence of general responsibility. At the time of preparing its proposal, Campbell was not licensed in the State of California as a security contractor. In order to satisfy the solicitation's licensing requirement, Campbell obtained a subcontract quotation from a firm which was licensed to perform these services. Campbell's initial proposal, which included the subcontracted security services, was subsequently found technically unacceptable for other reasons. Throughout the technical negotiations, Campbell states that it was continually advised by SAAD of the need for detailed information about the personnel and other resources with which Campbell proposed to perform the services. After providing additional information, Campbell was advised that its proposal was deemed acceptable and was requested to submit a best and final offer. Campbell was later informed that SAAD proposed to award the contract to Pan Am and that Pan Am was not licensed to perform security services in California.

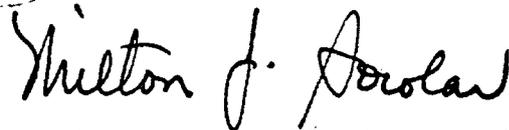
By letter dated February 9, 1981, the contracting officer, responding to a Campbell inquiry concerning Pan Am's licensing status, indicated that the licensing requirement had not been required to be satisfied at the time of submission of proposals but that a license could be obtained prior to the start of performance. Thus, instead of subcontracting the security services, Pan Am, the successful offeror, was in the process of obtaining the necessary California license for the purpose of enabling it to directly perform the security functions of the contract. The contracting officer subsequently made an affirmative determination of responsibility regarding Pan Am and awarded the contract to that firm.

Campbell contends that SAAD "waived" the "definitive requirement" set forth in the specifications concerning the licensing requirement for Pan Am. Since the need to comply with all security requirements was reinforced during negotiations, Campbell argues that all requirements had to be satisfied before an offeror could be deemed eligible to receive the award. Campbell states that a waiver of this requirement substantially prejudiced it because the use of a licensed subcontractor for the security services had a substantial cost impact on Campbell's proposal, allegedly increasing the cost for the performance of the work by an amount which exceeds the difference between the costs as proposed by Campbell and by Pan Am.

The protester further contends that a determination of responsibility is inherent in the process of determining that an offeror is technically acceptable and within the competitive range. In this regard, according to Campbell, the solicitation contained a specific requirement for a security guard license. Thus, the time period for producing evidence demonstrating compliance with the specific licensing requirement occurred prior to submission of best and final offers and not subsequent to award of the contract. As the protester urges that the license requirement was encompassed in the technical evaluation, a mere promise or representation of intent to comply must be judged when that technical evaluation is made. Campbell reads the RFP as requiring satisfaction of these "definitive criteria" such as the licensing requirement at the time of the submission of proposals. Thus, Campbell asserts that the agency failed to provide all offerors "evenhanded" treatment by permitting Pan Am to satisfy the "definitive criteria" subsequent to submission of best and final offers.

Although the evaluation criteria and the proposal preparation instructions mentioned that offerors would be evaluated on how they proposed to perform the security services there was no specific mention in either section of the license requirement. Similarly, although Campbell was advised during negotiations that it needed an active Facility Security Clearance prior to award, this was a distinct requirement which the contractor must possess for the phase-in period prior to the commencement of actual performance. There was no mention that the license requirement, which would not be needed until actual performance started approximately 60 days after the beginning of the phase-in period, needed to be fulfilled during the evaluation period. As the license requirement was merely part of the general specifications and since it is a requirement that, as shown above, has traditionally been allowed to be satisfied after award, we do not believe the agency acted unreasonably or unfairly by not including it in the technical evaluation but treating it as a matter of responsibility to be complied with prior to the commencement of actual performance.

The protest is denied.



Acting Comptroller General
of the United States